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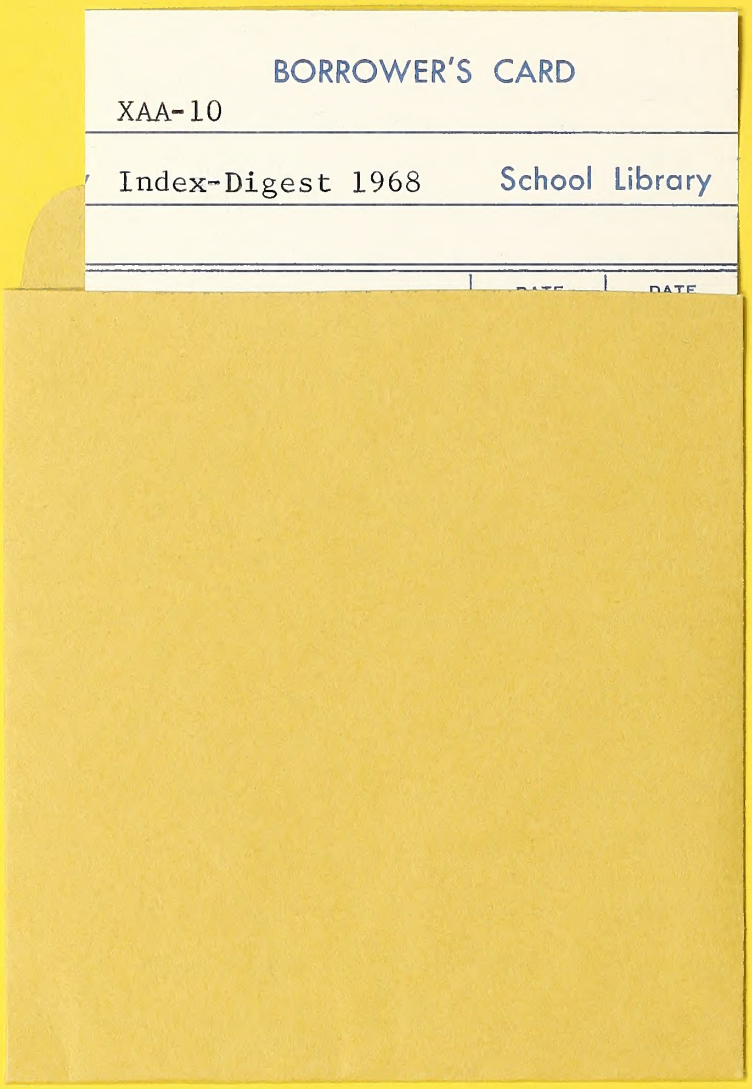
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Frank J. Barry -- Edward Weinberg, Solicitor

INDEX-DIGEST
JANUARY - DECEMBER 1968

This index-digest covers all the published and all the important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 31, 1968. It supersedes the index-digest for January-September 1968.

Decisions and opinions cited as appearing in 75 I. D. are published and copies may be obtained by subscription from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402. Other decisions and opinions are unpublished and copies may be obtained from the Office of the Solicitor.

Editor: V. E. Burgin; Compositor: M. B. Harper -- 1969

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Anquita L. Kluenter et al., A-30483, November 18, 1965
See Bobby Lee Moore et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser and Leo J. Kottas v. Stewart L. Udall, et al., Civil Action No. 1371, D. Mont. Suit pending. Judgment for defendant June 7, 1968. Appeal docketed.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 186 (1958)

Max Krueger v. Fred A. Seaton, Civil Action No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum and Cale M. Shearer, A-30838 (December 21, 1967)

James M. Krumtum and Cale M. Shearer v. Udall, et al., Civil No. 6567, D. Ariz. Suit pending.

Richard M. Lade, As Attorney in Fact for Santa Fe Pacific Railroad Company, A-29121 (January 10, 1963)

Richard M. Lade, Attorney in Fact for the Santa Fe Pacific Railroad Company v. Udall, et al., Civil No. 67-14, D. Ore. Suit pending. Judgment for defendant, July 11, 1968. Appeal docketed.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil Action No. 2784-62. Judgment for defendant, March 6, 1963, affirmed, 324 F. 2d 428 (1963). Cert. denied, 376 U.S. 907 (1964).

Langdon H. Larwill, et al., A-28697 (May 16, 1963)

Pacific Oil Company, a Corporation v. Stewart L. Udall, Civil Action No. 9406, D. Colo. Judgment for defendant, September 21, 1967. 273 F. Supp. 203 (1967). Appeal docketed.

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. United States, Ct. Cl. 393-67. Suit pending.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil Action No. 474-64. Judgment for Defendant, October 5, 1964. Appeal voluntarily dismissed, March 26, 1965.

Perley M. Lewis and Mildred C. Lewis, A-28707 (December 30, 1963)

Perley M. Lewis, et ux. v. Stewart L. Udall, et al., Civil Action No. 5451 Phx., D. Ariz. Judgment for defendant, March 22, 1966. Affirmed, 374 F. 2d 180 (C.A. 9, 1967). No petition.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil Action No. 5003 Phx., D. Ariz. Judgment for defendant, July 21, 1967. Appeal docketed June 11, 1968.

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil Action No. 2932-62. Judgment for defendant, July 15, 1963. No appeal.

Milton H. Lichtenwalner, et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil Action No. A-21-63, D. Alas. Dismissed on merits, April 24, 1964. Stipulated dismissal of appeal with prejudice October 5, 1964.

Linn Land Company, A-28765 (July 12, 1962)

Linn Land Co., et al. v. Stewart L. Udall, Civil Action No. 63-264, D. Ore. Consolidated with Forsberg v. Udall, Schmand v. Udall and Property Management Company v. Udall, Battle Mt. Co v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam decision as to Battle Mountain which see. Stipulated dismissal on appeal, October 13, 1966.

Marwin E. Liss et al., 70 I.D. 228 (1963)

Hope Natural Gas Company v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil Action No. 2109-63. Judgment for defendant, September 20, 1965. Affirmed April 28, 1966. No petition.

Leland M. Lucas, A-29228 (December 10, 1962)

Leland Murray Lucas v. Stewart L. Udall et al., Civil Action No. 5007 Phx., D. Ariz. Stipulated dismissal, October 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunice Lucero Vaile v. Stewart L. Udall, Civil No. 6808, W.D. Wash. Judgment for defendant, May 12, 1967. Summary judgment entered May 25, 1967. No appeal.

Sheridan L. McGarry, A-28759 (January 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil Action No. 1262-62. Judgment for defendant, September 4, 1962. Affirmed 317 F. 2d 595 (1963). No petition.

Elgin A. McKenna Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. Udall, Civil No. 2001-67. Judgment for defendant, February 14, 1968. Appeal docketed.

A. G. McKinnon, 62 I.D. 164 (1955)

A. J. McKinnon v. United States, Civil No. 9833, D. Ore. Judgment for plaintiff, December 12, 1959 (opinion); reversed, 289 F. 2d 908 (9th Cir. 1961).

Wade McNeil et al., 64 I.D. 423 (1957)

Wade McNeil v. Fred A. Seaton, Civil Action No. 648-58. Judgment for defendant, June 5, 1959 (opinion); reversed, 281 F. 2d 931 (1960). No appeal.

Wade McNeil v. Albert K. Leonard, et al., Civil Action No. 2226, D. Mont. Dismissed, November 24, 1961 (opinion). Order, April 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil Action No. 678-62. Judgment for defendant, December 13, 1963 (opinion). Affirmed 340 F. 2d 801 (1964). Cert. den., 381 U.S. 904 (1965).

Wade McNeil, A-30736 (April 20, 1967)

Wade McNeil v. Udall, Civil Action No. 2705, D. Mont. Suit pending.

Billy Mathis et al., A-30512 (July 6, 1966)

Billy Mathis et al. v. Stewart L. Udall, et al., Civil No. 6833, D. N.M. Dismissed with prejudice, January 6, 1967. Rendered moot by P.L. 89-365.

Ralph E. May, A-29014 (January 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil Action No. 1379-62. Dismissed with prejudice March 22, 1963. No appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, February 8, 1967.

Allan E. Mecham, et al., A-30244 (December 23. 1964)

Allan E. Mecham, et al. v. Stewart L. Udall, et al., Civil Action No. C-22-65, D. Utah. Motion to Dismiss granted, May 11, 1965. Aff'd., 369 F. 2d 1 (1966). No petition.

Salvatore Megna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatore Megna, Guardian etc. v. Fred A. Seaton, Civil Action No. 468-58. Judgment for plaintiff, November 16, 1959; motion for reconsideration denied, December 2, 1959. No appeal.

Philip T. Garigan v. Stewart L. Udall, Civil Action No. 1577 Tus., D. Ariz. Preliminary injunction against defendant, July 27, 1966. Supplemental decision rendered September 7, 1966. Judgment for Plaintiff, May 16, 1967. No appeal.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil Action No. 346-60. Judgment for defendant, February 23, 1961. Affirmed, 307 F. 2d 676 (1962). Cert. den., 371 U.S. 967 (1963). Rehearing den., 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia and Shell Oil Company v. Stewart L. Udall, Civil Action No. 562-60.

Judgment for defendant, June 27, 1961: no appeal taken.

Duncan Miller, A-28008 (August 10, 1959), A-28093 et al. (October 30, 1959), A-28133 (December 22, 1959), A-28378 (August 5, 1960), A-28258 et al. (February 10, 1960).

Duncan Miller v. Stewart L. Udall, Civil Action No. 3470-60. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962). No petition.

Duncan Miller, A-28057 (October 16, 1959), A-28398 (August 31, 1960), A-28359 (July 18, 1960), A-28433 (August 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (March 31, 1959), A-27810 (January 16, 1959).

Duncan Miller v. Stewart L. Udall, Civil Action No. 3931-60. Judgment for defendant, April 4. 1963. Aff'd., Per Curiam dec., February 7, 1964. No petition.

Duncan Miller v. Stewart L. Udall, Civil Action No. 1642-64. Dismissed with prejudice, August 13, 1964. Affirmed, January 12, 1965. No petition.

Duncan Miller, A-28528 et al. (February 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil Action No. 3904-60. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962). No petition.

Duncan Miller, A-28509 (October 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil Action No. 187-61. Judgment for defendant, May 24, 1963. No appeal.

Duncan Miller, A-28172 (February 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil Action No. 3932-60. Judgment for defendant, May 22, 1963. Affirmed, February 7, 1964. No petition.

Duncan Miller v. Stewart L. Udall, Civil Action No. 1642-64. Dismissed with prejudice, August 13 1964. Affirmed, January 12, 1965. No petition.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (January 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil Action No. 1268-61. Judgment for defendant, September 28, 1962. Appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil Action No. 3409-61. Judgment for defendant, May 21, 1963. No appeal.

Duncan Miller, A-29312 (January 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil Action No. 1381-62. Judgment for defendant, November 21, 1962 (opinion). Appeal dismissed April 12, 1963.

Duncan Miller, A-28937 (September 25, 1962), A-29041 (November 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil Action No. 4003-62. Dismissed for want of prosecution, May, 1966.

Duncan Miller, A-29365 (July 1, 1963), A-29521 (August 29, 1963), and A-29633 (September 5, 1963).

Duncan Miller v. Stewart L. Udall, Civil Action No. 2413-63. Dismissed, October 2, 1967. No appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil Action No. 931-63. Dismissed for lack of prosecution, April 21, 1966. No appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil Action No. 1522-64. Judgment for defendant, June 29, 1965. No appeal.

Duncan Miller, A-29900 (March 5, 1964), A-30067 (March 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil Action No. 689-64. Dismissed for failure to prosecute, July 6, 1966.

Duncan Miller, A-30213 (April 8, 1964), A-30192 (April 9, 1964), A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil Action No. 1829-64. Judgment for defendant, September 28, 1965. No appeal.

Duncan Miller, A-30122 (September 23, 1964), A-30451 (November 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil Action No. 2543-64. Motion to amend granted, February 15, 1966. Suit pending.

Duncan Miller, A-30270 (May 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil Action No. C-153-65, D Utah. Judgment for defendant, November 15, 1965. Affirmed, 368 F. 2d 548 (1966). No petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil Action No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966. No appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil Action No. 2384-65. Judgment for defendant, October 12, 1966.

On appeal. Dismissed May 22, 1967. Supp. complaint dismissed June 12, 1967. Appeal dismissed April 12, 1968. Petition for cert.

Duncan Miller, A-30517 (April 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil Action No. 5047, D. Wyo. Judgment for defendant, August 11, 1966. Appeal dismissed, September 14, 1967.

Duncan Miller, A-30570 (August 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alas. Judgment for defendant, March 13, 1967. Motion for reconsideration denied, September 19, 1967. No appeal.

Duncan Miller, A-30546 (August 10, 1966), A-30566 (August 11, 1966), and 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissed with prejudice, April 17, 1967. No appeal.

Duncan Miller, A-29231 (February 5, 1963)
See Lucille S. West, Duncan Miller et al.

Duncan Miller, A-30669 (November 8, 1966)

Duncan Miller v. Director of the Bureau of Land Management, Civil No. 779, D. Mont. Suit pending.

Duncan Miller, A-30628 (November 16, 1966), A-30684 (January 19, 1967), A-30708 (November 16, 1966), A-30907 (September 12, 1967)

Duncan Miller v. Secretary of the Interior and his officers, Civil No. 7334, D. N.M. Dismissed with prejudice. August 28, 1968.

Duncan Miller, A-30891 (March 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice. October 14, 1968.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan et al. v. Warren J. Gray et al., Civil Action No. 4877 Phx., D. Ariz. Judgment for the defendant, November 13, 1967. Appeal docketed December 27, 1967.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough, et al., Civil Action No. C-200-63, D. Utah. Judgment for defendant, January 8, 1964. No appeal.

Bobby Lee Moore et al., 72 I.D. 505 (1965)
Anquita L. Kluenter et al., A-30483 (November 18, 1965)

Gary Carson Lewis, etc., et al., v. General Services Administration et al., Civil No. 3253 S.D. Cal. Judgment for defendant, April 12, 1965. Affirmed, 377 F. 2d 499 (1967). No petition.

Henry S. Morgan et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil Action No. 3248-59. Judgment for defendant, February 20, 1961 (opinion). Affirmed, 306 F. 2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., Inc., 64 I.D. 185 (1957)

Morrison-Knudsen Co., Inc. v. United States, Court of Claims No. 239-61. Remanded to Trial Commissioner, May 14, 1965, 170 Ct. Cl. 757. Commissioner's report adverse to U.S. issued June 20, 1967. On appeal to Court.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil Action No. 3207-62. Judgment for defendant, October 22, 1964 (opinion). No appeal.

Jess H. Nicholas, Jr., A-30065 (October 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil Action No. A-67-64, D. Alas. Judgment for the defendant, September 17, 1965. Affirmed, 385 F. 2d 177 (1967). No petition.

Leonard E. Noren, A-27583 (September 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil Action No. 2139 ND, S.D. Cal. Judgment for the defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil Action No. 2347 ND, S.D. Cal. Judgment for plaintiff, September 17, 1965. Reversed and remanded sub nom.

Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren et al. Reversed and remanded, 370 F. 2d 845 (1966). Rehearing denied, February 8, 1967. Cert. den. 387 U.S. 917 (1967).

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil Action No. 4181-60. Dismissed, November 15, 1963. Case reinstated February 19, 1964. Remanded, April 4, 1967. Appeal taken. Reversed and remanded with directions to enter judgment for appellant. 389 F. 2d 974 (1968). Cert. den. 392 U.S. 909 (1968).

Oil and Gas Leasing on Lands Withdrawn by Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil Action No. 760-63, D. Alas. Withdrawn April 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil Action No. A-17-63, D. Alas. Dismissed, April 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil Action No. A-15-63, D. Alas. Dismissed, October 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil Action No. A-20-63, D. Alas. Dismissed October 29, 1963. (Oral opinion). Affirmed, 332 F. 2d 62 (1964). No petition.

George L. Gucker v. Stewart L. Udall, Civil Action No. A-39-63, D. Alas. Dismissed without prejudice, March 2, 1964. No appeal.

Joseph I. O'Neill, Jr., A-30488 (April 19, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Order denying defendant's motion for summary judgment without prejudice and remanding case for clarification of Departmental decision, March 8, 1967. No appeal.

Eugene C. Paine et al., A-27632 (August 21, 1958)

Eugene C. Paine et al. v. Stewart L. Udall, Civil Action No. 2607-58. Judgment for plaintiff, September 24, 1959. Vacated and remanded, Wright v. Seaton, Misc. 1403, January 11, 1960. Judgment for plaintiff, May 4, 1960. Reversed and remanded, February 23, 1961. Judgment for defendant, March 20, 1961. No petition.

Irene Mitchell Pallin, A-28766 (September 21, 1962)

Irene Mitchell Pallin v. United States, Civil No. 47552, N.D. Cal. Suit pending.

Pan American Petroleum Corp., IA-840 (December 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil Action No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961). Subsequent administrative appeal and supplemental complaint filed. Judgment for plaintiff, February 16, 1966. No appeal.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. United States, Ct. Cl. 40-58. Stipulated judgment for plaintiff, December 19, 1958.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Suit pending.

Peter Kiewit Sons' Company, 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S. Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322 (June 7, 1966)

Don and Winona James v. Mabel George Gomez, et al., Civil No. S-66-104, E.D. Cal. Suit pending.

M. Blaine Peterson, A-28111 (November 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil Action No. 3953-60. Dismissed without prejudice, November 13, 1961. No appeal.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1958)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F. 2d 793 (1968).

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil Action No. 1351-62. Judgment for defendant, August 2, 1962. Affirmed, 317 F. 2d 573 (1963). No petition.

Platte Valley Construction Co., IBCA 168 (August 28, 1958)

George Stanek, et al. v. U.S., Ct. Cl. 189-62. Compromised.

John M. Pomeroy, A-28134 (January 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil Action No. 8033, N.D. Cal. Dismissed by plaintiff, August 15, 1961. No appeal.

Port Blakely Mill Company, 71 I.D. 217 (1964)

Port Blakely Mill Company v. United States, Civil Action No. 6205, W.D. Wash. Dismissed with prejudice, December 7, 1964.

Property Management Company, A-29144 (August 19, 1963)

Property Management Company v. Stewart L. Udall, Civil No. 64-28, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966). Appeal dismissed, October 13, 1966. See Linn Land Company v. Udall.

R. E. Puckett, A-30419 (October 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, August 15, 1966.

Ethel C. Radzewicz et al., A-30866 (January 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Suit pending.

Ray D. Bolander Co., Inc., 72 I.D. 449 (1965)

Ray D. Bolander Co., Inc. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, December 13, 1968.

Estate of Elgin Red Elk, IA-1230 (November 13, 1964)

Bert Taunah, et al. v. Stewart Udall, Civil Action No. 65-82, W.D. Okla. Judgment for plaintiff, April 27, 1967. Reversed and remanded, 398 F. 2d 795. No petition.

R. G. Brown, Jr. and Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr., et al. v. United States, Court of Claims No. 373-63. Judgment for plaintiff, April 6, 1965. No appeal.

Richfield Oil Corporation, 62 I.D. 269 (1955)

Richfield Oil Corporation v. Fred A. Seaton, Civil Action No. 3820-55. Dismissed without prejudice, March 6, 1958. No appeal.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965)

Thomas M. Bunn v. Stewart L. Udall, Civil Action No. 2615-65. Suit pending.

Evelyn R. Robertson, et al., Duncan Miller, A-29251 (March 21, 1963)

Duncan Miller v. Stewart L. Udall, Civil Action No. 1066-63. Judgment for defendant, March 13, 1964. Affirmed, 349 F. 2d 193 (1965). Cert. Den., 385 U.S. 929 (1966). Rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil Action No. A-37-63, D. Alas. Dismissed with prejudice, September 7, 1965. No appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil Action No. 1561-63. Judgment for defendant, April 4, 1964. Affirmed, 349 F. 2d 195 (1965). No petition.

Edgar Rundle, A-29593 (August 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil Action No. 191-65. Judgment for defendant, September 22, 1965. Affirmed, 379 F. 2d 112 (1967). Cert. denied, 389 U.S. 845 (1967).

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil Action No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962). No appeal.

Louise Safarik, A-28307 et al. (April 22, 1960)

John J. King v. Stewart L. Udall, Civil Action No. 3903-60. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962). No petition.

Louise Safarik et al., A-28562 et al. (January 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil Action No. 1081-61. Judgment for defendant June 23, 1961. Affirmed 304 F. 2d 944 (1962). Cert. den., 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil Action No. 1202-61. Judgment for defendant, June 23, 1961. Affirmed, 304 F. 2d 944 (1962). No petition.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil Action No. 105-63. Judgment for defendant, June 16, 1965. Affirmed, sub nom. S. Jack Hinton, et al. v. Stewart L. Udall,. 364 F. 2d 676 (1966). Petition for Rehearing Denied, August 15, 1966. No petition.

B. F. Sandoval, Jr., A-29975 (June 12, 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil Action No. 5779, D. N.M. Judgment for plaintiff, May 11, 1965. Appeal dismissed January 12, 1966. Order vacating prior judgment issued January 28, 1966.

Santa Fe Sand and Gravel Co., Inc., A-30657 (April 25, 1967)

Santa Fe Sand and Gravel Co., Inc. v. Boyd L. Rasmussen et al , Civil No. 7135, D. N.M. Summary judgment for defendant, May 28, 1968. No appeal.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (August 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil Action No. 63-484, D. Ore. Judgment for defendant. Appeal dismissed, October 13, 1966. See Linn Land Company v. Stewart L. Udall. 255 F. Supp. 382 (1966).

Ann D. Schmidt, A-28349 (July 23, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil Action No. 3912-60. Judgment for defendant, April 11, 1961: no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (January 8, 1964). Reconsideration denied, March 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil Action No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966). No appeal.

Charles Schraier, Robert Schulein, et al., A-30814, A-30816 (November 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, October 31, 1968. Appeal docketed.

Joseph M. Schuck, A-28603 (August 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, December 15, 1961. No appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil Action No. 1402 Tuc., D. Ariz. Complaint dismissed, January 30, 1962. No appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil Action No. 1402 Tuc., D. Ariz. Judgment for defendant, March 19, 1962. No appeal.

Seal and Company, 68 I.D. 94 (1961)

Seal and Company, Inc. v. U.S., Ct. Cl. 274-62. Judgment for Plaintiff, January 31, 1964. No appeal.

John W. Shaw, A-29143 (April 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Ore. Affirmed, 264 F. Supp. 390 (1967). Appeal taken March 13, 1967. Appeal dismissed.

Shell Oil Company, A-30575 (October 31, 1966), Chargeability of Acreage Embraced in Oil and Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Company v. Udall, Civil No. 216-67. Stipulated dismissal August 19, 1968.

Sinclair Oil and Gas Company, 75 I.D. 155 (1968)

Sinclair Oil and Gas Company v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Suit pending.

L. B. Smith, et al., A-30447 (October 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil Action No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967. No appeal.

Stanley C. Soho, A-28135 (August 19, 1959), A-28135 Supp. (July 17, 1961), Supplemented by decision dated February 1, 1963, by Director, Bureau of Land Management, approved by the Secretary March 18, 1963.

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil Action No. 1648 Tuc., D. Ariz. Judgment for defendant, September 3, 1963. Affirmed, 336 F. 2d 706 (1964). Cert. den., 381 U.S. 904 (1965).

Stanely C. Soho et al., A-28175 (April 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, January 17, 1961. No appeal.

Southport Land & Commercial Co., Sacramento 075330 (January 15, 1964)

Southport Land & Commercial Co. v. Stewart Udall, et al., Civil Action No. 42385, N.D. Cal. Judgment for defendant, November 26, 1965. Affirmed 371 F. 2d 526 (1967). No petition.

Southwest Welding and Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Suit pending.

Southwestern Petroleum Corporation, et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil Action No. 5773, D. N.M. Judgment for defendant, March 8, 1965. Affirmed, 361 F. 2d 650 (1966). No petition.

Standard Oil Company of Texas, 71 I.D. 257 (1964)

California Oil Company v. Secretary of the Interior, Civil No. 5729, D. N.M. Judgment for plaintiff, January 21, 1965. No appeal.

Ross Stegman, A-30812 (November 21, 1967)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Suit pending.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (November 10, 1966)

Amanda Price v. Udall, Civil No. 33-67, D. Alas. Judgment for plaintiff, February 23, 1968. Appeal docketed.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman, et al. v. Stewart L. Udall, Civil Action No. 1852-62. Judgment for defendant, November 1, 1962 (opinion). Reversed, 324 F. 2d 411 (1963). Petition for rehearing denied, October 16, 1963. Cert. granted, 376 U.S. 961 (1964). Dist. Ct. Affirmed, 380 U.S. 1 (1965). Rehearing denied, 380 U.S. 989 (1965).

Texaco, Inc., 75 I.D. 8 (1968)

Texaco, Inc., a corp. v. Secretary of the Interior, Civil No. 446-68. Suit pending.

Texas Construction Co., 64 I.D. 97 (1957)
Reconsideration denied, IBCA-73 (June 18, 1957)

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Estate of John Thomas, Deceased Cayuse Allottee No. 223 and Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil Action No. 859-581. On September 18, 1958, the court entered an order granting defendant's motion for judgment on the pleadings or for summary judgment. The plaintiffs appealed and on July 9, 1959, the decision of the District Court was affirmed, and on October 5, 1959, petition for rehearing en banc was denied, 270 F. 2d 319. A petition for a writ of certiorari was filed January 28, 1960, in the Supreme Court. Petition denied, 364 U.S. 814 (1960), rehearing denied, 364 U.S. 906 (1960).

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil Action No. 5343, D. N.M. Dismissed with prejudice June 25, 1963.

See also:

Thor-Westcliffe Development, Inc., v. Stewart L. Udall., et al., Civil Action No. 2406-61. Judgment for defendant, March 22, 1962. Affirmed, 314 F. 2d 257 (1963). Cert. den., 373 U.S. 951 (1963).

Richard K. Todd, et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil Action No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion). Affirmed, 350 F. 2d 748 (1965). Petition for rehearing en banc denied. Cert. denied, 383 U.S. 912 (1966).

Atwood et al. v. Stewart L. Udall, Civil Actions 293-62 - 299-62, incl. Judgment for defendant, August 2, 1962. Affirmed, 350 F. 2d 748 (1965). No petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, September 17, 1963. No appeal.

Tree Land Nursery, Inc., IBCA-436 (October 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Suit pending.

Tyee Construction Co., IBCA-112 and 113 (April 30, 1958)

Tyee Construction Co. v. United States, Court of Claims No. 312-60. Judgment for defendant, June 1, 1962. No appeal.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968)

The Superior Oil Co. et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968. Appeal docketed August 2, 1968.

Union Oil Company of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Company of California v. Stewart L. Udall, Civil Action No. 3042-58. Judgment for defendant, May 2, 1960 (opinion). Affirmed, 289 F. 2d 790 (1961). No petition.

Union Oil Company of California, et al., 71 I.D. 169 (1964), 72 I.D. 313 (1965)

Penelope Chase Brown, et al. v. Stewart Udall, Civil Action No. 9202, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966). Appeal docketed.

Equity Oil Company v. Stewart L. Udall, Civil Action No. 9462, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Gabbs Exploration Co. v. Stewart L. Udall, Civil Action No. 9464, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Harlan H. Hugg, et al. v. Stewart L. Udall, Civil Action No. 9252, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Barnette T. Napier, et al. v. Secretary of the Interior, Civil Action No. 8691, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966). Appeal taken.

John W. Savage v. Stewart L. Udall, Civil Action No. 9458, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

The Oil Shale Corporation, et al. v. Secretary of the Interior, Civil No. 8680, D. Colo. Judgment for plaintiff, 261 F. Supp 954 (1966). Appeal taken.

The Oil Shale Corp. et al. v. Stewart L. Udall, Civil Action No. 9465, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil Action No. 8685, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966). Appeal taken.

Union Oil Company of California, a Corp. v. Stewart L. Udall, Civil Action No. 9461, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Union Oil Company of California, 71 I.D. 287 (1964)

Union Oil Company of California v. Stewart L. Udall, Civil Action No. 2595-64. Judgment for defendant, December 27, 1965. No appeal.

Union Pacific Railroad Company, 72 I.D. 76 (1965)

The State of Wyoming and Gulf Oil Corp. v. Stewart L. Udall, etc., Civil Action No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966). Affirmed, 379 F. 2d 635 (1967). Cert. denied, 389 U.S. 905 (1967).

United States v. Alonzo A. Adams et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams et al. v. Paul B. Witmer et al., Civil Action No. 1222-57-Y, S.D. Cal. Complaint dismissed, November 27, 1957 (opinion); reversed and remanded, 271 F. 2d 29 (1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F. 2d 37 (1959).

United States v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, January 29, 1962 (opinion). Judgment modified, 318 F. 2d 861 (1963). No petition.

United States v. Arizona Exploration Co., et al., A-28876 (June 22, 1962)

Blaine J. Lord et al. v. Roy T. Helmandollar, et al., Civil Action No. 987-63. Judgment for defendants, September 30, 1963. Appeal dismissed, 348 F. 2d 780 (1965). Cert. den., 384 U.S. 947 (1966).

United States v. R. B. Borders, A-29624 (October 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil Action No. 414, D. Nev. Judgment for defendant, August 19, 1964 (opinion). No appeal.

United States v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. United States, Civil Action No. C-164-61, D. Utah. Complaint dismissed, January 9, 1962. No appeal.

Nick Chournos et al. v. United States et al., Civil Action No. C-238-62, D. Utah. Dismissed, June 28, 1963. Affirmed, 335 F. 2d 918 (1964). No petition.

United States v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil Action No. 191-59. Judgment for defendant, April 4, 1960. No appeal.

United States v. J. R. Clements, A-27751 (December 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil Action No. 560-59. Judgment for defendant, January 13, 1960. No appeal.

United States v. Alfred Coleman, A-28557 (March 27, 1962)

United States v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, February 25, 1965 (opinion). Remanded, 363 F. 2d 190 (1966). Cert. granted,

389 U.S. 970 (1967). Reversed and remanded to 9th Circuit, 390 U.S. 599 (1968). Rehearing denied May 27, 1968.

United States v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil Action No. 65-581, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966). Affirmed, 399 F. 2d 615 (1968).

United States v. Alvis F. Denison, et al., 71 I.D. 144 (1964)

Marie W. Denison, individually and as executrix of the Estate of Alvis F. Dension, deceased v. Stewart L. Udall, Civil Action No. 963, D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Suit pending.

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United States v. J. S. Devenny, A-30289 (August 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil Action No. 6283, W.D. Wash. Dismissed, June 22, 1966. No appeal.

United States v. Francis Dlouhy et al., A-27668 (September 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil Action No. 405-59. Judgment for defendant, May 3, 1960. Appeal dismissed, November 28, 1960.

United States v. The Dredge Corporation, A-28022 (December 18, 1959)

The Dredge Corporation v. J. Russell Penny, Civil Action No. 396, D. Nev. Judgment for defendant, September 25, 1962. Remanded, 338 F. 2d 456 (1964). Judgment for plaintiff, August 8, 1966. Judgment for defendants, 398 F. 2d 791 (1968). Petition for cert. December 4, 1968.

United States v. Ralph Fairchild, A-30803 (January 19, 1968)

Minerals Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Suit pending.

United States v. Everett Foster et al., 65 I.D. 1 (1958)

Everett Foster et al. v. Fred A. Seaton, Civil Action No. 344-58. Judgment for defendants, December 5, 1958 (opinion); affirmed, 271 F. 2d 836 (1959). No petition.

United States v. Fred Garula, A-29948 (June 3, 1964)

Fred Garula v. Stewart L. Udall, Civil No. 8998, D. Colo. Judgment for plaintiff, April 26, 1967. 268 F. Supp. 910 (1967). Judgment for appellants per curiam (May 24, 1968). No petition.

U.S. v. Golden Eagle Mining Corporation, A-30864 (September 25, 1967)

Golden Eagle Mining Corporation v. Stewart L. Udall, Secretary of the Interior, Civil No. S-937, E.D. of Cal. Suit pending.

United States v. Richard P. Haskins, A-30737 (December 19, 1966)

Richard P. Haskins for himself and as Admin. of the Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil Action 67-1815-CC, C.D. Cal. Judgment for defendant, April 15, 1968. Appeal docketed, June 12, 1968.

United States v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk, et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967). Appeal taken, October 23, 1967.

United States v. Charles H. Henrikson, et al., 70 I.D. 212 (1963)

Charles H. Henrikson, et al. v. Stewart L. Udall, et al., Civil Action No. 41749, N.D. Cal. Judgment for defendant, May 28, 1964. Affirmed, 350 F. 2d 949 (1965); rehearing den. October 28, 1965. Cert. denied, 380 U.S. 940 (1966).

U.S. v. Taylor T. Hicks et al., A-30780 (October 24, 1967)

Taylor T. Hicks et al. v. United States of America, Stewart L. Udall, Secretary of the Interior, Civil No. Civ.-1202 Pct., D. Ariz. Suit pending.

United States v. Independent Quick Silver Co., 72 I.D. 367 (1965)

Independent Quick Silver Co., an Oregon Corp. v. Stewart L. Udall, Civil Action No. 65-590, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966). Appeal dismissed (closed).

United States v. R. B. Johnson, A-30405 (October 28, 1965)

R. B. Johnson v. Stewart L. Udall, Civil No. 1071, D. Ariz. Judgment for defendant, November 21, 1967. No appeal.

U.S. v. Robert N. Johnson et al., A-30828 (January 29, 1968)

Robert N. Johnson, et al. & Thelma A. Johnson as individ. & as Executrix of Nolan F. Fultz estate v. Stewart L. Udall, Civil No. 68-994-AAH, C.D. Cal. Judgment for plaintiff, 292 F. Supp. 738 (1968). No appeal.

United States v. Richard Dean Lance, 73 I.D. 218 (1966)

Richard Dean Lance v. Stewart L. Udall, et al., Civil Action No. 1864, D. Nev. Judgment for defendant, January 23, 1968. No appeal.

United States v. Lane Minerals, Inc., A-30497 (March 28, 1966)

Lane Minerals, Inc. v. Stewart L. Udall and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, Civil No. 67-535, D. Ore. Suit pending.

United States v. Mary A. Mattey, 67 I.D. 63 (1960)

United States v. Edison R. Nogueria, et al., Civil No. 65-220-PH, C.D. Cal. Judgment for defendant, November 16, 1966. Reversed and remanded November 4, 1968.

U.S. v. Alvin M. May, A-30675 (July 25, 1968)

Alvin M. May v. Stewart Udall, et al., Civil No. R-2107, D. Nev. Suit pending.

United States v. Kenneth McClarty, 71 I.D. 331 (1964)

Kenneth McClarty v. Stewart L. Udall, et al., Civil Action No. 2116, E.D. Wash. Judgment for defendant, May 26, 1966. Appeal taken, July 13, 1966.

U.S. v. Ernest Evon Moseley, A-30971 (December 13, 1967)

Ernest E. Moseley v. Udall, Civil No. 6939 Phx., D. Ariz. Suit pending.

United States v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil Action No. 299, D. Nev. Judgment for defendant, February 19, 1963 (opinion). Affirmed, 326 F. 2d 896 (1964). Rehearing den., April 3, 1964. No petition.

United States v. Melvin L. Nevitt, A-30030 (July 28, 1964)

United States v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, November 28, 1966. No appeal.

United States v. New Jersey Zinc Company, 74 I.D. 191 (1967)

The New Jersey Zinc Corp., a Del. corp. v. Stewart L. Udall, Civil No. 67-C-404, D. Colo. Suit pending.

United States v. Wilma L. Oldaker, A-30378 (August 26, 1965)

Wilma Oldaker v. Stewart L. Udall, Civil Action No. A-98-65, D. Alas. Stipulated dismissal with prejudice, March 3, 1967. No appeal.

United States v. Richard C. Porter et al., A-29882 (April 24, 1964)

Hal W. Eldridge, et al. v. Secretary of the Interior, Civil Action No. 64-353, D. Ore. Judgment for defendant, December 15, 1965. No appeal.

United States v. E. V. Pressentin et al., A-27495 (April 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil Action No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered July 24, 1959.

E. V. Pressentin et al. v. Fred A. Seaton, Civil Action No. 1907-59. Judgment for defendant, January 15, 1960. Reversed and remanded, 284 F. 2d 195 (1960). See A-30004, 71 I.D. 447 (1964).

United States v. E. V. Pressentin and Devisees of the H. S. Martin Estate, 71 I.D. 447 (1964)

E. V. Pressentin, Fred J. Martin, Admin. of H. A. Martin Estate v. Stewart L. Udall and Charles Stoddard, Civil Action No. 1194-65. Suit pending.

United States v. C. F. Pruess, Sr., A-28641 (August 22, 1961)

C. F. Pruess, Sr. v. Stewart L. Udall, Civil Action No. 1331-62. Judgment for defendant, May 12, 1964. Remanded, 359 F. 2d 615 (1965). Judgment for defendant, January 4, 1966. Per curiam decision remanded for transfer to District Court for Oregon. Not reported.

C. F. Pruess, Sr. v. Stewart L. Udall, Civil No. 67-167, D. Oreg. Judgment for defendant, 286 F. Supp. 138 (1968). Appeal docketed, August 7 1968.

United States v. Cecil R. Reed, A-30354 (September 29 1965)

Cecil R. Reed v. Stewart L. Udall, et al., Civil Action No. 1784, D. Nev. Judgment for defendant, December 19, 1967. Appeal docketed.

U.S. v. George A. and Dorothy Relyea, A-30909 (June 25, 1968)

George A. Relyea and Dorothy Relyea v. Stewart Udall, Secretary of the Interior, Civil No. 3-68-20, D. Idaho. Suit pending.

United States v. Edwin R. Saurers, et al., A-30097 (July 9, 1964)

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United States v. Charles L. Seeley, et al., A-28127 (January 28, 1960)

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United States v. Ollie Mae Shearman et al., 73 I.D. 386 (1966)

United States v. Hood Corporation, et al., Civil No. 1-67-97, S.D. Idaho. Suit pending.

United States v. Thomas R. Shuck, A-27965 (February 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, December 7, 1961. No appeal.

United States v. United States Silica Corp., et al., A-30400 (August 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Suit pending.

United States v. C. F. Snyder et al., 72 I.D. 223 (1965)

Ruth Snyder, Administratrix of the Estate of C. F. Snyder, Deceased et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp. 110 (1967). Reversed, May 24, 1968; rehearing granted.

United States v. Charles E. Stewart, A-28966 (September 25, 1962)

Charles E. Stewart v. Gordon Penny, et al., Civil Action No. 1619, D. Nev. Judgment for plaintiff, May 4, 1965. No appeal.

U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

Alfred N. Verrue v. Secretary of the Interior, Civil No. 6898 Phx., D. Ariz. Suit pending.

U.S. v. Oscar W. Weiss, et al., A-30809 (September 14, 1967)

Oscar W. Weiss v. Stewart L. Udall, Civil No. C-882. D. Colo. Suit pending.

U.S. v. Thomas C. Wells, A-30805 (January 8, 1968)

Thomas C. Wells v. Udall, Civil No. S-693, E.D. Cal. Remanded to Secretary (December 12, 1968).

United States v. Vernon O. & Ina C. White, 72 I.D. 522 (1965)

Vernon O. White & Ina C. White v. Stewart L. Udall, Civil No. 1-65-122, D. Idaho. Judgment for defendant, January 6, 1967. Judgment for defendant, June 17, 1968. No petition.

United States v. Rodney Wood et al., A-30697 (May 31, 1967)

Rodney Wood et al v. Stewart L. Udall, Secretary of the Interior, and Orville L. Freeman, Secretary of Agriculture, Civil Action No. S-436, N.D. Cal. Dismissed without prejudice, November 7, 1967. Amended complaint filed.

United Technical Industries, Inc., A-29406 (April 24, 1963)

Jay Nielson v. J. E. Keough et al., Civil Action No. C-158-63, D. Utah. Dismissed July 13, 1964 (opinion). No appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584 (September 21, 1966)

Paul E. Unruh v. Udall et al., Civil No. 1894-N, D. Nev. Judgment for defendant, June 14, 1967. No appeal.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil Action No. 1744-56. Dismissed by stipulation, April 18, 1957. No appeal.

Burt A. Wackerli, et al., 73 I.D. 280 (1966)

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Estate of Amelia Keyes Abbott Viramontes Walker, IA-1339 (April 5, 1966)

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Jack A. Walker, A-30492 (April 28, 1966)

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Wasatch Development Co., et al., A-28674 (May 16, 1963)

Joseph B. Umpleby et al. v. Stewart L. Udall, Civil Action No. 8156, D. Colo. Judgment for defendant, 285 F. Supp. 25 (1968). No appeal.

Weardco Construction Corp., 64 I.D. 376 (1957)

Weardco Construction Corp. v. United States, Civil Action No. 278-59-PH, S.D. Cal. Judgment for plaintiff, October 26, 1959. Satisfaction of judgment entered February 9, 1960.

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Cecil H. Phillips et al. v. Stewart L. Udall, Civil Action No. 847-63. Dismissed on behalf of all except Lucille S. West. Judgment for defendant, February 25, 1964. No appeal.

Estate of Louise Wilson, IA-1380 (March 1, 1966)

Charles W. Heffelman v. Stewart L. Udall, Civil No. 6402, N.D. Okla. Dismissed June 16, 1966. Affirmed, 378 F. 2d 109 (1967). Cert. denied, 389 U.S. 926 (1967).

Buck Willcoxson, A-27402, A-27403 (December 17, 1956)

Buck Willcoxson v. Douglas Henriques, Civil Action No. 3596, D. N.M. Motion of plaintiff to dismiss case without prejudice granted, December 10, 1957.

Buck Willcoxson v. Stewart L. Udall, Civil Action No. 2029-58.

United States v. Buck Willcoxson et al., Civil Action No. 1492-59.

Buck Willcoxson v. United States, Civil Action No. 972-59.

Actions consolidated. Judgment for defendant, plaintiff, and defendant, respectively, August 3, 1961. Affirmed 313 F. 2d 884 (1963). Cert. denied. 373 U.S. 932 (1963).

William A. Smith Contracting Co., Inc., IBCA-83 (July 16, 1959)

William A. Smith Contracting Co., Inc., et al. v. United States, Court of Claims No. 264-57. Judgment for plaintiff, 292 F. 2d 847 (1961). No appeal.

William A. Smith Contracting Co., Inc. v. United States, Court of Claims No. 279-59. Judgment for defendant, 292 F. 2d 854 (1961). No appeal.

Frank Winegar, Shell Oil Co. and D. A. Shale Inc., 74 I.D. 161 (1967)

Shell Oil Co., et al. v. Udall, et al., Civil No. 67-C-321, D. Colo. Judgment for plaintiff, (September 18, 1967). No appeal.

W. L. Ridge Construction Co., IBCA-80 (November 30, 1960)

W. L. Ridge v. United States, Court of Claims No. 301-60. Suit dismissed, October 1, 1963.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah, Deceased, Comanche Enrolled Restricted Indian No. 1927 v. Jane Asenap, Wilfred Tabbytite, J. R. Graves, Examiner of Inheritance, Bureau of Indian Affairs, Department of the Interior of the United States of America, and Earl R. Wiseman, District Director of Internal Revenue, Civil Action No. 8281, W.D. Okla. The court dismissed the suit as to the Examiner of Inheritance, and the plaintiff dismissed the suit without prejudice as to the other defendants in the case.

Thomas J. Huff, Adm. with will annexed of the Estate of Wook-Kah-Nah v. Stewart L. Udall, Civil Action No. 2595-60. Judgment for defendant, June 5, 1962. Remanded. 312 F. 2d 358 (1962).

Elodymae Zwang, et al., A-30201 (February 3, 1965)

Darrell Zwang and Elodymae Zwang v. Stewart L. Udall, Civil No. 65-716-EC, S.D. Cal. Judgment for defendant, February 23, 1966. Affirmed, 371 F. 2d 634 (1967). No petition.

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ACCOUNTS

(See also Funds)

GENERALLY

The authority of this Department to compromise claims of the United States under the Federal Claims Collection Act of 1966 (80 Stat. 308), is, with specific exceptions, a discretionary matter, and amounts owing to the United States are not automatically subject to compromise under the act as a matter of right.

Applicability of the Federal Claims Collection Act of 1966 (80 Stat. 308) To Delinquent Operation and Maintenance Charges, Indian Irrigation and Power Projects, M-36724 (Jan. 17, 1968)

PAYMENTS

The Act of September 22, 1961, 75 Stat. 584, 25 U.S.C. secs. 164-5 (1964) requires that monies representing per capita shares or other individualizations, which have been unpaid for a period of six years, be restored to Indian tribal accounts even if such individualizations are represented by government checks which may be outstanding. Such restoration would cut off the claims of the payees of such checks but not the rights of holders in due course who are protected by the Act of August 21, 1957, 31 U.S.C. sec. 132 (1964).

Restoration to Indian Tribes of Funds Held for Unclaimed Per Capita Payments Where Payment Checks are Outstanding, M-36741 (Jan. 8, 1968)

A filing fee for an appeal deposited in the after hours mail box at the land office after business hours on the last day for filing an appeal and paying the filing fee will be deemed to have been timely filed.

A check timely given in payment of a filing fee for an appeal which is refused payment when first presented to the bank on which it is drawn but which is later paid without having been returned to the land office will be deemed to have been timely filed.

Bernard E. Darling v. Charles Lewellen, A-30885 (June 13, 1968)

ACCRETION

In determining whether a land mass should be considered an accretion to the mainland bordering a navigable river or as islands with accretions thereto, the fact that aerial photographs reveal that in the past at times of high water there were sloughs and channels separating the land from the mainland and also separating portions of the land mass and that there are now finger-like depressions left following the complete recession of waters from the lands which are attached to the mainland completely is not sufficient evidence to find that the formation of the land began as islands rather than as accretion belonging to the mainland.

The portion of accreted land extending from in front of an adjoining landowner's property to and in front of land owned by the United States within the lateral side boundaries of the United States' land belongs to the United States even though originally a slough may have separated the accretion from the mainland of the Government land.

William R. Mills et al., A-30710 (Feb. 28, 1968)

ACT OF MARCH 1, 1907

The Secretary may authorize issuance of a patent under the Act of March 1, 1907, 34 Stat. 1015, 1022, for specific groups of Mission Indians on a tract of land which has been withdrawn since 1903 for these Indians and occupied and used as Indian land for more than 50 years, in the absence of evidence that the conditions for patenting it under the 1907 act which existed in 1903 did not exist in 1907.

Jurisdiction of Lands Withdrawn for the Benefit of Certain Groups of Mission Indians, California--Patent of Land Under the Act of March 1, 1907, M-36756 (Oct. 8, 1968)

ACT OF AUGUST 25, 1916

Under the provisions of the act of August 25, 1916, 39 Stat. 535, as amended, 16 U.S.C., sec. 3, the Secretary of the Interior is not obligated to renew outstanding grazing permits, does not have the authority to grant an estate or interest in monument lands, and cannot grant an irrevocable permit for the use of monument lands.

Legality of Grazing Permits in Organ Pipe Cactus National Monument, M-36734 (Apr. 5, 1968)

ACT OF JUNE 22, 1936

Lands in T. 11 N., R. 30 E., M. D. M., and T. 12 N., R. 28 E., M. D. M., Nevada, except for mineral interests, may, in the discretion of the Secretary, be added to the Walker River Indian Reservation under the Act of June 22, 1936 (49 Stat. 1806), to the extent that the total acreage added to the reservation under that act is within the maximum authorized by statute.

Relicted Lakebed Lands Adjoining Walker River Indian Reservation, Nevada, M-36736 (Apr. 9, 1968)

ACT OF AUGUST 13, 1954

As the Klamath Termination Act sets no time limitation on the provision authorizing the Secretary to adjust, eliminate, or cancel irrigation costs in specified circumstances, the authority continues as long as the purpose of the statute requires; and the publication of the proclamation declaring the termination of the Federal trust relationship pursuant to section 18 of the Termination Act is not a bar to canceling irrigation charges under section 13(d) of the act where both the express language and

ACT OF AUGUST 13, 1954--Continued

the sense of the provisions involved support the conclusion that the jurisdiction of the Federal Government continues after the termination proclamation for this purpose, among others.

The Bureau of Reclamation has no statutory responsibility in connection with the transfer of a unit of the Klamath Indian Irrigation Project to a water users' association or irrigation district formed pursuant to section 13(a) of the Klamath Termination Act.

Where operation and maintenance of a unit of the Klamath Indian Irrigation Project is to be transferred to the water users and the redesignation as to irrigability of lands for assessment purposes is contemplated, any such redesignation should include an explanation of the basis for change from the present designation.

Transfer of Modoc Point Unit, Klamath Indian Irrigation Project, Oregon, M-36737 (Apr. 26, 1968)

ACT OF AUGUST 19, 1958

The Act of August 19, 1958, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390, requires the preparation of a plan for distributing the assets of California rancherias or for selling such assets and distributing the proceeds, but neither the amended act nor its legislative history specify or restrict the manner of sale.

The sale of tribal lands of a California rancheria under the Act of August 19, 1958, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390, may be made by option agreement, so long as the transaction does not delay the termination of the trust responsibilities and services to the Indians of the rancheria involved.

Proposed Sale of Mission Creek Allotted and Tribal Trust Lands, M-36742 (Jan. 19, 1968)

ACT OF JULY 14, 1960

Lands withdrawn for a harbor improvement project which are excess to the project are not "surplus property" subject to sale under section 108, Act of July 14, 1960, 33 U.S.C. sec. 578, until after the Secretary of the Interior determines that the lands are not suitable for return to the public domain.

Proposed Sale of Withdrawn Land By the Corps of Engineers, M-36749 (Aug. 21, 1968) 75 I.D. 245

ACT OF SEPTEMBER 22, 1961

The Act of September 22, 1961, 75 Stat. 584, 25 U.S.C. secs. 164-5 (1964) requires that monies representing per capita shares or other individualizations, which have been unpaid for a period of six years, be restored to Indian tribal accounts even if such individualizations are represented by government checks which may be outstanding. Such restoration would cut off the claims of the payees of such checks but not the rights of holders in due course who are protected by the Act of August 21, 1957, 31 U.S.C. sec. 132 (1964).

Restoration to Indian Tribes of Funds Held for Unclaimed Per Capita Payments Where Payment Checks are Outstanding, M-36741 (Jan. 8, 1968)

ACT OF JULY 2, 1964

The Department of the Interior was authorized to withhold funds accruing under the Refuge Revenue Sharing Act during the pendency of Administrative compliance proceedings under the Civil Rights Act of 1964, 78 Stat. 252 (1964), 42 U.S.C. sec. 2000d (1964), particularly where the local agency responsible for public schools had failed to execute an assurance of compliance with the Civil Rights Act of 1964.

ACT OF JULY 2, 1964--Continued

Funds accruing under the Refuge Revenue Sharing Act must continue to be withheld from a county or parish until adequate assurance is received from both the local agency responsible for public schools and the local agency responsible for roads that they are in compliance with the Civil Rights Act of 1964.

In the Matter of Cameron Parish, Louisiana Cameron Parish Police Jury and Cameron Parish School Board (June 3, 1968) 75 I.D. 289

ACT OF JULY 19, 1966

The authority of this Department to compromise claims of the United States under the Federal Claims Collection Act of 1966 (80 Stat. 308), is, with specific exceptions, a discretionary matter, and amounts owing to the United States are not automatically subject to compromise under the act as a matter of right.

A regulation issued under the Federal Claims Collection Act of 1966 authorizes referral to the Department of Justice for litigation of claims amounting to less than $250 where a debtor is able to pay and the Government can effectively enforce payment, as it presumably can where a statutory lien against project lands is retained by the United States as security for the payment of operation and maintenance charges of Indian water and power projects.

Applicability of the Federal Claims Collection Act of 1966 (80 Stat. 308) To Delinquent Operation and Maintenance Charges, Indian Irrigation and Power Projects, M-36724 (Jan 17, 1968)

Under section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, P.L. 89-508, 31 U.S.C. secs. 951-953 (Supp. II, 1965-66), and implementing regulations in 4 CFR Part 104, collection action on claims by the United States for delinquent accounts due an Indian irrigation project cannot be terminated for inability to locate the debtor unless all four requirements of 4 CFR 104(b) are met, including the running of the applicable statute of limitations. The applicable statute of limitations is the Act of July 18, 1966,

ACT OF JULY 19, 1966--Continued

80 Stat. 304, P. L. 89-505, 28 U.S.C. secs. 2415, 2416 (Supp. II, 1965-66), under which court proceedings to enforce the claims must be started by July 17, 1972, or within six years after the right of action accrues.

Under section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, P. L. 89-508, 31 U.S.C. secs. 951-953 (Supp. II, 1965-66), and implementing regulations in 4 CFR Part 104, collection action on claims by the United States for delinquent accounts due an Indian irrigation project should not be temporarily suspended for inability to locate the debtor "after diligent effort" until the sources of assistance suggested in 4 CFR 104.2 and DM 344.4.2 have been utilized.

Under section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, P. L. 89-508, 31 U.S.C. secs. 951-953 (Supp. II, 1965-66), and implementing regulations in 4 CFR Part 104, collection action on claims by the United States for delinquent accounts due an Indian irrigation project can be terminated when it is determined that the cost of collection is likely to exceed the amount recoverable. This authorization is provided by 4 CFR 104.3(c) and is available whether or not the debtor can be located, but should be exercised with prudence and only after diligent efforts have been made administratively to locate and collect from the debtor.

Suspension or Termination of Collection Action on Claims for Indian Irrigation Projects Under the Act of July 19, 1966, 80 Stat. 309 (Federal Claims Collection Act of 1966), M-36746 (May 10, 1968)

ACT OF SEPTEMBER 16, 1966

Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. secs. 721-740). Applicability to milling, smelting, and refining operations.

Act applicable to mills, but not to smelters and refineries.

Applicability of Federal Metal and Nonmetallic Mine Safety Act (Act of September 16, 1966; 80 Stat. 772; 30 U.S.C. 721-740, Supp. III (1968)), M-36750 (Aug. 30, 1968)

ADMINISTRATIVE PRACTICE

Where a regulation provides that the rates charged for a right-of-way across Government lands may be revised only after notice and an opportunity for hearing, it is improper to increase the rates without following the prescribed procedure.

Where a regulation provides that rates charged for rights-of-way across Government lands may be revised only after notice and an opportunity for hearing, the hearing ought to be held before the rate is issued, but if the procedure is not followed, a hearing in compliance with the regulation may be held after the first rate determination is set aside.

A requirement that a hearing be held before an action may be taken is satisfied even though an official other than the one who conducts the hearing makes the decision.

The determination of whether to hold a hearing on an issue of fact before a field commissioner abides in the discretion of the Director of the Bureau of Land Management and an appellant from a land office decision fixing or revising a rate charge for a right-of-way over Government lands is not entitled to one as a matter of right, but the Director (or Secretary) may order that one be held if he deems it advisable. Such a hearing will be ordered where it is proposed to change a charge for a revocable right-of-way across wildlife refuge lands from an annual rental to a lump-sum charge and there is sharp controversy as to the basis for determining the lump-sum payment.

Transcontinental Gas Pipe Line Corporation et al., A-30622 (Jan. 29, 1968)

When mail is properly addressed and deposited in the United States mails, with postage thereon duly prepaid, there is a rebuttable presumption that it was received by the addressee in the ordinary course of mail.

Delivery by post office of a document to a land office by the placement of mail in a post office box, where the land office customarily receives its mail, during the hours in which the land office is open to the public for the filing of documents constitutes delivery to and receipt by the land office of the document.

Norma J. Rose, A-30881 (Feb. 19, 1968)
75 I. D. 37

ADMINISTRATIVE PROCEDURE ACT

HEARING EXAMINERS

Although deference is usually given to findings of fact by hearing examiners because of their opportunity to observe the demeanor of witnesses, etc., reviewing officers have the authority to make all findings of fact based on the record as though they were making the initial decision in the case and they are fully as capable of making findings of fact as the examiner where the evidence is clear and uncontroverted.

United States v. Alvin M. May, A-30675 (July 25, 1968)

HEARINGS

Although exclusionary rules of evidence applicable in court proceedings need not be followed in administrative hearings, a hearing examiner in the interest of fair play and justice may either exclude or, at least, give little weight to a written, uncorroborated statement by a mining claimant who submits the statement in lieu of making an appearance at the hearing.

United States v. Arch Little and Ethelyn Little, A-30842 (Feb. 21, 1968)

Where a hearing has been held in a mining contest, the record made at the hearing shall be the sole basis for a decision, and evidence submitted at a later date cannot be considered in deciding the case on the merits but can be considered to determine whether or not a further hearing is warranted; where there is no showing that a further hearing would be productive of more conclusive evidence on the question of discovery than has been developed, there is no basis for remanding the case for that purpose.

United States v. David L. King, A-30867 (Feb. 28, 1968)

ADMINISTRATIVE PROCEDURE ACT--Continued

HEARINGS--Continued

Applicants for sodium preference-right leases will be afforded an opportunity to present evidence at a hearing in accordance with the provisions of the Administrative Procedure Act where there may be questions of fact as to the extent and nature of the occurrence of the minerals in the deposits and as to the feasibility of the development of the deposits.

Wolf Joint Venture et al., A-30978 (May 2, 1968) 75 I. D. 137

Applicants for sodium preference right leases will be afforded an opportunity to present evidence at a hearing in accordance with the provisions of the Administrative Procedure Act where there may be questions of fact as to the extent and nature of the occurrence of the minerals in the deposits and as to the feasibility of the development of the deposits.

Kaiser Aluminum and Chemical Corporation et al., A-30982 (May 3, 1968)

An offeror for an oil and gas lease is not entitled to a hearing to examine the reasons for the rejection of his offer

Robert Kamon et al., A-30732 (Sept. 13, 1968)

PUBLIC INFORMATION

The Public Information Act (5 U.S.C. sec. 552) does not require the disclosure of partial or preliminary technical reports which may impair the conduct of research or be inconsistent with the presentation of the results of such research in a reliable form.

The Public Information Act (5 U.S.C. sec. 552) does not require the disclosure of documents relating to research performed by contract with the Department if such disclosure may prejudice patent rights of the Government or would not be compatible with provisions of the contract.

Office of Coal Research - Disclosure of Information, M-36753 (July 10, 1968)

ADMINISTRATIVE PROCEDURE ACT--Continued

PUBLIC INFORMATION--Continued

Forms 9-330 (Well Completion or Recompletion Report and Log) and 9-331 C (Application for permit to Drill, Deepen, or Plug Back) of the Geological Survey contain confidential commercial and financial information filed by oil and gas producers and should not be made available for public inspection or copying.

Information on the forms not of a confidential or financial character may be extracted and disclosed upon request.

Geological Survey - Disclosure of Information, M-36739 (June 13, 1968)

ALASKA

HOMESTEADS

A homestead final proof submitted at the end of the fifth entry year, whether considered as regular or commutation proof, must be rejected and the entry canceled when it shows on the face that the entryman has done no cultivation at all in the fourth and fifth entry years.

Pekka Merikallio, A-30892 (Mar. 5, 1968)

An application for a homestead entry in Alaska is properly rejected where it is filed after a selection by the State under its Statehood Act, although the selection application was originally filed while the selected lands were withdrawn but was subsequently reasserted by amendments to the application after revocation of the withdrawal, and where alleged acts of settlement were also subsequent to an amendment of the State's selection application which had the effect of segregating the land from appropriation by application or settlement and location.

Charles H. Sells, Patricia J. Davenport, A-30613 (Sept. 10, 1968) 75 I. D. 297

When a settler on lands in Alaska who bases her claim on rights obtained through a prior settler joins in litigation seeking review of a Departmental decision which held that the land sought was within a prior valid State selection and not

ALASKA--Continued

HOMESTEADS--Continued

open to settlement by her predecessor, she is bound by a court ruling affirming the Department's decision, and she gains no rights to the land by her occupation of it.

Neva Pearl Gingerich, A-30651 (Sept. 12, 1968)

Notices of location of settlement or occupancy claims for lands in a State selection application held to have been validly filed as of a time prior to the submission of the notices earn the applicants no claim or interest in the lands they describe.

William Hall, Diane Hall, Boyd D. Kilgore, A-30849, A-30852, A-30857 (Sept. 16, 1968)

INDIAN AND NATIVE AFFAIRS

The Federal Indian Liquor laws, 18 U.S.C. secs. 1154 and 1156 (1964 ed.), as modified by 18 U.S.C. sec. 1161 (1964 ed.), are applicable in Alaska to the Congressional, Secretarial and Executive Order native reservations and to dependent native communities.

Liquor Control, Indian Communities, Alaska, M-36712 (Supp.) (Jan. 15, 1968)

A native village in Alaska can contract for a claims attorney by action of a general meeting of the village (or its governing body, if it is specifically authorized to enter into attorney contracts for the village), but only after approval of the Secretary of the Interior or his authorized representative.

A native village in Alaska recognized as having relations with the Federal Government has the exclusive privilege of prosecuting a village claims against the United States under the Indian Claims Commission Act (25 U.S.C. sec. 70i), and individual members of the village cannot make a representative claims attorney contract to prosecute the village's claims.

Ahtna Tanah Ninnah Association (Copper River Indian Land Association) in Alaska is not a recognized tribe or band of Indians and has no authority to execute an attorney contract subject to R.S. sec. 2103, as amended, 25 U.S.C. sec. 81 (1964).

ALASKA--Continued

INDIAN AND NATIVE AFFAIRS--Continued

The Arctic Slope Native Association in Alaska is not a recognized tribe or band of Indians and has no authority to execute an attorney contract subject to R. S. sec. 2103, as amended, 25 U. S. C. sec. 81 (1964).

Approval of Claims Attorney Contracts of Arctic Slope Native Association and Ahtna Tanah Ninnah Association (Copper River Indian Land Association), M-36744 (Apr. 8, 1968)

The Alaska Federation of Natives is not an "Indian chartered corporation" and is not eligible for a loan from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 10, 1934, 48 Stat. 986, as amended, 25 U. S. C. sec. 470 (1964), nor is it a "tribe, band or group" otherwise eligible for such a loan under authority of the act of May 7, 1948, 62 Stat. 211, 25 U. S. C. sec. 482 (1964). Even if otherwise eligible, such a loan could not be made for the purpose of enabling it to attempt to secure the passage of congressional legislation.

Eligibility of Alaska Federation of Natives for Loan from Revolving Fund for Loans, M-36772 (July 8, 1968)

IRRIGATION AND POWER

The authority of the Alaska Power Administration to engage in general investigations and planning and resource studies pursuant to Secretarial Order No. 2900 derives from several separate but overlapping statutory authorizations, including section 5 of the Flood Control Act of 1944 (16 U. S. C. sec. 825s), the Act of August 9, 1955 (69 Stat. 618), and statutory authorities of the Department respecting investigations relating to projects for the development and utilization of water, power and related resources in Alaska, such as the Public Land Administration Act of 1961 (43 U. S. C. sec. 1362). The appropriations limitation in the 1955 Act does not apply to study and planning activities justified under other laws.

Alaska Power Administration Planning and Study Authority, M-36727 (Mar. 27, 1968)

ALASKA--Continued

LAND GRANTS AND SELECTIONS

Applications

An application for a homestead entry in Alaska is properly rejected where it is filed after a selection by the State under its Statehood Act, although the selection application was originally filed while the selected lands were withdrawn but was subsequently reasserted by amendments to the application after revocation of the withdrawal, and where alleged acts of settlement were also subsequent to an amendment of the State's selection application which had the effect of segregating the land from appropriation by application or settlement and location.

Charles H. Sells, Patricia J. Davenport, A-30613 (Sept. 10, 1968) 75 I. D. 297

When a settler on lands in Alaska who bases her claim on rights obtained through a prior settler joins in litigation seeking review of a Departmental decision which held that the land sought was within a prior valid State selection and not open to settlement by her predecessor, she is bound by a court ruling affirming the Department's decision, and she gains no rights to the land by her occupation of it.

Neva Pearl Gingerich, A-30651 (Sept. 12, 1968)

Notices of location of settlement or occupancy claims for lands in a State selection application held to have been validly filed as of a time prior to the submission of the notices earn the applicants no claim or interest in the lands they describe.

William Hall, Diane Hall, Boyd D. Kilgore, A-30849, A-30852, A-30857 (Sept. 16, 1968)

An application for a homestead entry and a notice of settlement and location created no claim or interest in land which had been withdrawn from appropriation by a valid State selection at the time the application was filed or settlement made.

Dale Johnson, A-30806 (Sept. 17, 1968)

Where land covered by a prematurely filed State selection is described in notices of publication published after the land has become available for selection, the notices will be considered as reassertions of the State's selection and will segregate the land they describe from all appropriation by application or settlement so

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Applications--Continued

that an application for homestead entry filed thereafter is properly rejected.

John Gonzales, A-30604 (Sept. 26, 1968)

Where a prematurely filed State selection is amended after the land has become available for selection and during a preference period granted the State, the amendment will be considered a reassertion of interest in the lands originally applied for and will be considered as a refiling of the original application and will segregate the land it describes from all appropriation by application or settlement; thus an application for homestead entry filed thereafter is properly rejected.

Dell M. Husted, A-30932 (Dec. 5, 1968)

TOWNSITES

A deed to a lot in an Alaskan native townsite will be issued to one who has claimed and occupied the lot for 30 years in preference to one who claims the lot through inheritance but has neither exercised ownership over it nor utilized it for over 20 years.

Paul R. Rudolph, A-30884 (Feb. 23, 1968)

TRADE AND MANUFACTURING SITES

Where the Bureau of Land Management has found that an applicant to purchase a trade and manufacturing site is entitled to only a portion of the surveyed lot applied for by reason of his occupancy and improvement of the land, the applicant may properly be required to furnish a deposit to cover the estimated costs of a supplemental survey and plat to segregate the allowable portion of the lot.

George Mor, A-30914 (May 27, 1968)

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

A trade and manufacturing site application based upon use of land for cabin rentals and recreation area is properly rejected where only one 8' x 12' cabin, furnished with two bunk beds and a coleman stove, was completed prior to the filing of the application and where evidence of the use of that cabin as commercial rental property is vague and is void of all details with respect to periods of use or occupancy and revenues derived therefrom.

A hearing will not be granted in connection with a trade and maunfacturing site application where the applicant fails to allege facts which, if proved, would entitle him to favorable consideration of his application.

Hershel E. Crutchfield, A-30876 (Sept. 30, 1968)

APPLICATIONS AND ENTRIES

GENERALLY

Where the Bureau of Land Management has found that an applicant to purchase a trade and manufacturing site is entitled to only a portion of the surveyed lot applied for by reason of his occupancy and improvement of the land, the applicant may properly be required to furnish a deposit to cover the estimated costs of a supplemental survey and plat to segregate the allowable portion of the lot.

George Mor, A-30914 (May 27, 1968)

AMENDMENTS

Where land covered by a prematurely filed State selection is described in notices of publication published after the land has become available for selection, the notices will be considered as reassertions of the State's selection and will segregate the land they describe from all appropriation by application or settlement so

AMENDMENTS--Continued

that an application for homestead entry filed thereafter is properly rejected.

John Gonzales, A-30604 (Sept. 26, 1968)

Where a prematurely filed State selection is amended after the land has become available for selection and during a preference period granted the State, the amendment will be considered a reassertion of interest in the lands originally applied for and will be considered as a refiling of the original application and will segregate the land it describes from all appropriation by application or settlement; thus an application for homestead entry filed thereafter is properly rejected.

Dell M. Husted, A-30932 (Dec. 5, 1968)

FILING

When mail is properly addressed and deposited in the United States mails, with postage thereon duly prepaid, there is a rebuttable presumption that it was received by the addressee in the ordinary course of mail.

Delivery by post office of a document to a land office by the placement of mail in a post office box, where the land office customarily receives its mail, during the hours in which the land office is open to the public for the filing of documents constitutes delivery to and receipt by the land office of the document.

Norma J. Rose, A-30881 (Feb. 19, 1968)
75 I. D. 37

Where land covered by a prematurely filed State selection is described in notices of publication published after the land has become available for selection, the notices will be considered as reassertions of the State's selection and will segregate the land they describe from all appropriation by application or settlement so that an application for homestead entry filed thereafter is properly rejected.

John Gonzales, A-30604 (Sept. 26, 1968)

FILING--Continued

Where a prematurely filed State selection is amended after the land has become available for selection and during a preference period granted the State, the amendment will be considered a reassertion of interest in the lands originally applied for and will be considered as a refiling of the original application and will segregate the land it describes from all appropriation by application or settlement; thus an application for homestead entry filed thereafter is properly rejected.

Dell M. Husted, A-30932 (Dec. 5, 1968)

SEGREGATIVE EFFECT

An application for a homestead entry in Alaska is properly rejected where it is filed after a selection by the State under its Statehood Act, although the selection application was originally filed while the selected lands were withdrawn but was subsequently reasserted by amendments to the application after revocation of the withdrawal, and where alleged acts of settlement were also subsequent to an amendment of the State's selection application which had the effect of segregating the land from appropriation by application or settlement and location.

Charles H. Sells, Patricia J. Davenport, A-30613 (Sept. 10, 1968) 75 I. D. 297

When a settler on lands in Alaska who bases her claim on rights obtained through a prior settler joins in litigation seeking review of a Departmental decision which held that the land sought was within a prior valid State selection and not open to settlement by her predecessor, she is bound by a court ruling affirming the Department's decision, and she gains no rights to the land by her occupation of it.

Neva Pearl Gingerich, A-30651 (Sept. 12, 1968)

Notices of location of settlement or occupancy claims for lands in a State selection application held to have been validly filed as of a time prior to the submission of the notices earn the applicants no claim or interest in the lands they describe.

William Hall, Diane Hall, Boyd D. Kilgore, A-30849, A-30852. A-30857 (Sept. 16, 1968)

APPLICATIONS AND ENTRIES--Continued

SEGREGATIVE EFFECT--Continued

An application for a homestead entry and a notice of settlement and location created no claim or interest in land which had been withdrawn from appropriation by a valid State selection at the time the application was filed or settlement made.

Dale Johnson, A-30806 (Sept. 17, 1968)

Where land covered by a prematurely filed State selection is described in notices of publication published after the land has become available for selection, the notices will be considered as reassertions of the State's selection and will segregate the land they describe from all appropriation by application or settlement so that an application for homestead entry filed thereafter is properly rejected.

John Gonzales, A-30604 (Sept. 26, 1968)

Where a prematurely filed State selection is amended after the land has become available for selection and during a preference period granted the State, the amendment will be considered a reassertion of interest in the lands originally applied for and will be considered as a refiling of the original application and will segregate the land it describes from all appropriation by application or settlement; thus an application for homestead entry filed thereafter is properly rejected.

Dell M. Husted, A-30932 (Dec. 5, 1968)

APPRAISALS

In determining just compensation for the acquisition of cattle ranches owned in fee, consideration could be given to the availability and accessibility of Federal land covered by grazing permit. However, where the availability of Federal land for grazing purposes is terminated prior to or coincident with the acquisition of privately owned lands, such an element of value of the base lands may not be considered.

Legality of Grazing Permits in Organ Pipe Cactus National Monument, M-36734 (April 5, 1968)

APPRAISALS--Continued

Where under a Bureau of Land Management timber sales contract and the regulations an extension of the contract time to remove the timber from the contract area may be made with payment of the price of the remaining timber reappraised according to the Bureau's prescribed appraisal procedures for determining the stumpage value, an appraisal so made will be accepted where the purchaser fails to demonstrate error either in the stumpage value or volume of remaining timber fixed by the appraisal.

William Hoornbeek, A-30900 (Apr. 29, 1968)

APPROPRIATIONS
(See also Expenditures, and Funds)

The authority of the Alaska Power Administration to engage in general investigations and planning and resource studies pursuant to Secretarial Order No. 2900 derives from several separate but overlapping statutory authorizations, including section 5 of the Flood Control Act of 1944 (16 U.S.C. sec. 825s), the Act of August 9, 1955 (69 Stat. 618), and statutory authorities of the Department respecting investigations relating to projects for the development and utilization of water, power and related resources in Alaska, such as the Public Land Administration Act of 1961 (43 U.S.C. sec. 1362). The appropriations limitation in the 1955 Act does not apply to study and planning activities justified under other laws.

Alaska Power Administration Planning and Study Authority, M-36727 (Mar. 27, 1968)

Federal funds appropriated by Congress for the construction, repair and improvement of Indian irrigation projects (see e.g., Interior Appropriation Act for fiscal year 1968, 81 Stat. 59, 61) may be used to construct laterals to serve lands included in such projects which are owned by non-Indians and the costs of such construction treated as reimbursable costs of the projects allocable on a per acre basis to all lands included therein.

Propriety of Using Funds Appropriated for Indian Irrigation Projects to Construct Facilities to Serve Lands Therein Owned by Non-Indians, M-36752 (Aug. 23, 1968)

BONNEVILLE POWER ADMINISTRATION

GENERALLY

In implementing an integrated hydro-thermal power program for the Pacific Northwest, the Bonneville Power Administrator may enter into contractual arrangements, including the acquisition by purchase or exchange of thermal power, which are reasonably related to the statutory objective of providing the most widespread use of and benefit from the existing and authorized Federal power investment at the lowest practical cost.

Bonneville Power Administration Hydro-Thermal Power Program, M-36769 (Dec. 18, 1968)
75 I. D. 403

BOUNDARIES

(See also Accretion, Reliction, and Surveys of Public Lands)

The portion of accreted land extending from in front of an adjoining landowner's property to and in front of land owned by the United States within the lateral side boundaries of the United States' land belongs to the United States even though originally a slough may have separated the accretion from the mainland of the Government land.

William R. Mills et al., A-30710 (Feb. 28, 1968)

BUREAU OF INDIAN AFFAIRS

A lease of Government property issued without statutory authority by an employee of the Bureau of Indian Affairs is invalid.

Status of Use Permit--Bureau of Indian Affairs to Paul D. Merrill, Ft. Wingate Trading Post, New Mexico, M-36743 (Mar. 19, 1968)

BUREAU OF INDIAN AFFAIRS--Continued

Under the Act of May 11, 1938 (52 Stat. 347, 25 U. S. C. sec. 396a et seq.) the Bureau of Indian Affairs has authority to approve tribal leases of coal reserved for the benefit of Indians belonging to and having tribal rights on the Fort Berthold Indian Reservation.

Jurisdiction of Coal Reserved for Benefit of Indians Belonging to and Having Tribal Rights on the Fort Berthold Indian Reservation, M-36745 (Apr. 19, 1968)

Where a State applies for land under the provisions of the Swamp Land Act, and after hearing the examiner holds that certain lands are subject to grant under the act, and where, after the decision of the hearing examiner is appealed by the Regional Solicitor on behalf of the State Director, Bureau of Land Management, the Bureau of Indian Affairs files a petition to intervene for itself and on behalf of an Indian Tribe, the petition will be denied, since all bureaus and agencies of the Department are represented in adjudicative proceeding within the Department by the Office of the Solicitor and are not permitted to independently participate.

In the Matter of Land Classification State of California, Applicant, A-31022 (Aug. 14, 1968)

BUREAU OF MINES

Applicability of Federal Metal and Nonmetallic Mine Safety Act (30 U. S. C. secs. 721-740) to milling, smelting, and refining operations.

Applicability of Federal Metal and Nonmetallic Mine Safety Act (Act of September 16, 1966; 80 Stat. 772; 30 U. S. C. 721-740, Supp. III (1968)), M-36750 (Aug. 30, 1968)

BUREAU OF RECLAMATION

GENERALLY

The Bureau of Reclamation has no statutory responsibility in connection with the transfer of

BUREAU OF RECLAMATION--Continued

GENERALLY--Continued

a unit of the Klamath Indian Irrigation Project to a water users' association or irrigation district formed pursuant to section 13(a) of the Klamath Termination Act.

Transfer of Modoc Point Unit, Klamath Indian Irrigation Project, Oregon, M-36737 (Apr. 26, 1968)

EXCESS LANDS

The excess land provisions of reclamation law place limitations on the delivery of project water to land owned by corporations. Corporate ownership of land may not be used as a device to avoid the excess land laws. The corporation land may also be attributed to stockholders for the purpose of ascertaining the amount of eligible land a stockholder may claim as an individual.

Corporate Ownership of Excess Lands--Land Owned by Glenn H. Weyer in Ainsworth Irrigation District, M-36730 (Apr. 22, 1968) 75 I. D. 119

Corporate Ownership of Excess Lands--Land Owned by Sill Properties, Inc. and Icardo Bros., Inc., M-36731 (Apr. 22, 1968) 75 I. D. 122

160-Acre Water Delivery Limitations as Applied to Family Held Corporations, M-36729 (Apr. 22, 1968) 75 I. D. 115

Act of September 2, 1960, 74 Stat. 732, Public Law 86-684, applies only to land subject to the acreage limitations of reclamation law at the time of death of the spouse. It does not create an absolute right in a surviving spouse to receive water for 320 acres as eligible land without regard to the time of death of the other marriage partner and the ownership status of the land at the time of the death.

Eligibility of Land Held by a Surviving Spouse for Project Water Under Act of September 2, 1960, 74 Stat. 732, M-36751 (Sept. 6, 1968)

For the purpose of applying the excess land laws, a corporation which is a stockholder in another corporation is treated in the same manner as an individual stockholder. A parent corporation is the beneficial owner of all lands held by its

BUREAU OF RECLAMATION--Continued

EXCESS LANDS--Continued

wholly owned subsidiary and the two corporations are limited to 160 eligible acres in a water district. The fact that the land was transferred from subsidiary to parent for tax reasons rather than to avoid the excess land laws does not permit more than 160 acres to receive project water.

160-Acre Water Delivery Limitations as Applied to Parent and Subsidiary Corporations, M-36755 (Oct. 7, 1968) 75 I. D. 335

BUREAU OF SPORT FISHERIES AND WILDLIFE

WILDLIFE REFUGES

The assistance of "public schools and roads" under the Refuge Revenue Sharing Act, 49 Stat. 383 (1935) as amended, 16 U. S. C. sec. 715s (1964), is a single Federal assistance program.

Under the terms of the Refuge Revenue Sharing Act, by which the Secretary of the Interior is required to pay funds for "public schools and roads," he is without authority to pay funds for the use of roads alone.

The Secretary of the Interior, under the Refuge Revenue Sharing Act, is without authority to allocate funds between local agencies responsible for public schools and roads.

The Department of the Interior was authorized to withhold funds accruing under the Refuge Revenue Sharing Act during the pendency of Administrative compliance proceedings under the Civil Rights Act of 1964, 78 Stat. 252 (1964), 42 U. S. C. sec. 2000d (1964), particularly where the local agency responsible for public schools had failed to execute an assurance of compliance with the Civil Rights Act of 1964.

Funds accruing under the Refuge Revenue Sharing Act must continue to be withheld from a county or parish until adequate assurance is received from both the local agency responsible for public schools and the local agency responsible for roads that they are in compliance with the Civil Rights Act of 1964.

In the Matter of Cameron Parish Louisiana Cameron Parish Police Jury and Cameron Parish School Board (June 3, 1968) 75 I. D. 289

CLAIMS BY THE UNITED STATES

The authority of this Department to compromise claims of the United States under the Federal Claims Collection Act of 1966 (80 Stat. 308), is, with specific exceptions, a discretionary matter, and amounts owing to the United States are not automatically subject to compromise under the act as a matter of right.

Applicability of the Federal Claims Collection Act of 1966 (80 Stat. 308) To Delinquent Operation and Maintenance Charges, Indian Irrigation and Power Projects, M-36724 (Jan. 17, 1968)

Under section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, P. L. 89-508, 31 U. S. C. secs. 951-953 (Supp. II, 1965-66), and implementing regulations in 4 CFR Part 104, collection action on claims by the United States for delinquent accounts due an Indian irrigation project cannot be terminated for inability to locate the debtor unless all four requirments of 4 CFR 104(b) are met, including the running of the applicable statute of limitations. The applicable statute of limitations is the Act of July 18, 1966, 80 Stat. 304, P. L. 89-505, 28 U. S. C. secs. 2415, 2416 (Supp. II, 1965-66), under which court proceedings to enforce the claims must be started by July 17, 1972, or within six years after the right of action accrues.

Under section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, P. L. 89-508, 31 U. S. C. secs. 951-953 (Supp. II, 1965-66), and implementing regulations in 4 CFR Part 104, collection action on claims by the United States for delinquent accounts due an Indian irrigation project should not be temporarily suspended for inability to locate the debtor "after diligent effort" until the sources of assistance suggested in 4 CFR 104.2 and DM 344.4.2 have been utilized.

Under section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, P. L. 89-508, 31 U. S. C. secs. 951-953 (Supp. II, 1965-66), and implementing regulations in 4 CFR Part 104, collection action on claims by the United States for delinquent accounts due an Indian irrigation project can be terminated when it is determined that the cost of collection is likely to exceed the amount recoverable. This authorization is provided by 4 CFR 104.3(c) and is available whether or not the debtor can be located, but should be exercised with prudence and only after diligent efforts have been made administratively to locate and collect from the debtor.

Suspension or Termination of Collection Action on Claims for Indian Irrigation Projects Under the Act of July 19, 1966, 80 Stat. 309 (Federal Claims Collection Act of 1966), M-36746 (May 10, 1968)

COAL LEASES AND PERMITS

LEASES

Under the Act of May 11, 1938 (52 Stat. 347, 25 U. S. C. sec. 396a et seq.) the Bureau of Indian Affairs has authority to approve tribal leases of coal reserved for the benefit of Indians belonging to and having tribal rights on the Fort Berthold Indian Reservation.

Under the Act of May 11, 1938 (52 Stat. 347, 25 U. S. C. sec. 396a et seq.) the Bureau of Indian Affairs has authority to approve tribal leases of coal reserved for the benefit of Indians belonging to and having tribal rights on the Fort Berthold Indian Reservation. The Act of May 11, 1938, supra, and the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, 25 U. S. C. sec. 461 et seq.) superseded the provisions of the Act of August 3, 1914 (38 Stat. 681) which placed jurisdiction over leasing of the Fort Berthold coal lands in the General Land Office.

Jurisdiction of Coal Reserved for Benefit of Indians Belonging to and Having Tribal Rights on the Fort Berthold Indian Reservation, M-36745 (Apr. 19, 1968)

COLOR OR CLAIM OF TITLE

GENERALLY

An applicant under the Color of Title Act of December 28, 1928, as amended, is not precluded from obtaining patent to more than 160 acres of public land where each tract applied for (a) does not exceed 160 acres, and (b) is a separate tract with a separate chain of title showing the tracts were not subdivisions of a larger tract.

Interpretation of Acreage Limitation Under the Color of Title Act, as Amended (43 U. S. C. Sec. 1068), M-36716 (Apr. 2, 1968)

CONSTITUTIONAL LAW

Federal regulation of future surface mining operations would be valid exercise by the Congress of the power conferred upon it by the Commerce Clause.

Constitutionality of S. 3132, 90th Congress, M-36748 (Aug. 8, 1968)

CONTESTS AND PROTESTS
(See also Rules of Practice)

GENERALLY

In a private contest initiated by a mining claimant to determine, as between himself and an oil and gas lessee, the right to leasable minerals within the limits of a mining claim, it is incumbent upon the mining claimant to show that a discovery was made upon the claim at a time when such discovery would vest in him a right to the leasable minerals, and if he is unable to sustain this burden, the contest is properly dismissed notwithstanding any acknowledgment on the part of the United States of a present discovery on the claim.

Marvel Mining Company v. Sinclair Oil and Gas Company et al., United States v. Marvel Mining Company, A-30871 (Dec. 30, 1968) 75 I. D. 407

CONTRACTS
(See also Delegation of Authority, and Rules of Practice)

CONSTRUCTION AND OPERATION

Generally

Where in the course of performing a contract for rental of equipment a bulldozer was damaged apparently as a result of the negligence of the operator who, together with the bulldozer, had been furnished for the performance of work to be designated by the Government and where the appellant contended that the negligence of the operator was imputable to the Government apparently on the theory of the loaned-servant doctrine, the Board finds that the doctrine is inapplicable to the case presented and therefore denies the claim asserted for the cost of repairing the damaged bulldozer and for a portion of the expenses related to the transportation of the bulldozer to the point of repair.

Appeal of Northern Commercial Company, IBCA-640-5-67 (May 23, 1968)

Actions of Parties

Where under a contract for the erection of transmission line towers of a new type the specifications required that the guy lines supporting

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties--Continued

the towers be drawn "snug but not excessively tight" and that thereafter there should be "no visible deformation of the tower," and where early in contract performance the parties by their conduct evidenced agreement that bringing the guy lines to a tension of 7,000 pounds would satisfy the requirements imposed by the general language of the specifications but subsequently the Government increased the tension requirements to 12,000 pounds, the Board finds that the imposition of the latter requirement constituted a constructive change and, pursuant to a stipulation of the parties, remanded the case to the contracting officer for determination of the amount of the equitable adjustment.

Appeal of COMPEC (A Joint Venture of Commonwealth Electric Co. and Power City Electric, Inc.), IBCA-573-6-66 (Jan. 4, 1968) 75 I. D. 1

A partial suspension order given in early November to a road construction contractor was found to be unreasonable and precipitant. After being encouraged by Government officials to install base course materials on several roads in the fall, the contractor rented many pieces of equipment and hired a large work force. The suspension, ordered after the material had been placed on only one of the roads and at a time when the appellant was fully committed to the heavy expenditures associated with base course operations at the isolated project site, was not justified under the guidelines established in a contract provision authorizing temporary suspension without change in the contract price; therefore, an adjustment under the Standard Suspension of Work Clause was called for.

Appeals of Gill Construction Company and Lindo Engineering Company, IBCA-588-9-66, IBCA-626-2-67 (Aug. 30, 1968)

Giving great weight to the practical construction the parties had placed upon the terms of a contract that the appellant acknowledged to be ambiguous and noting that approximately five years elapsed before the contractor advanced an interpretation of the contract at variance with what appeared to be the mutual understanding of the parties as to the nature of the contractual obligations assumed by them, the Board finds that the contract for delivery of cement for the Glen Canyon Dam was a requirements contract and that the appellant was not entitled to additional compensation for the 87,691 barrels of cement delivered in excess of the estimated requirement of 3,000,000 barrels.

Appeals of American Cement Corporation, IBCA-496-5-65 and IBCA-578-7-66 (Dec. 2, 1968) 75 I. D. 378

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions

A contractor under a contract to clear a reservoir of trees, brush and debris in connection with the construction of a dam in mountainous country who encountered heavy quantities of down and dead debris was not entitled to relief under section (a) of the Changed Conditions clause, on the ground that the material was concealed and constituted a latent condition, where the existence of such down and dead debris was clearly indicated in the contract and the Government had made no representation as to the amount thereof that might be found.

Where a reasonably careful pre-bid investigation by the contractor would have disclosed the existence of large quantities of down and dead debris, the presence of such quantities of down and dead debris at high elevations above the water where timber is no longer found standing was not uncommon in the area, and the contractor had seen some such debris in his investigation, the existence of such down and dead debris was not an unknown condition of an unusual nature within the meaning of section (b) of the Changed Conditions clause.

Appeals of Humphrey Contracting Corporation, IBCA-555-4-66, IBCA-579-7-66 (Jan. 24, 1968) 75 I. D. 22

A construction contractor's claim for extra compensation for stand-by costs, alleged interference and inefficient work production based on alleged changed conditions created by a labor dispute engendered by third persons causing a work stoppage, will be dismissed for want of jurisdiction on the Government's motion as being a claim for administrative relief not cognizable under the Changed Conditions clause of Standard Form 23A or any other provision of the contract. Contractor's associated claims for time extensions are found, however, to be within the jurisdiction of the Board.

Appeal of Bateson-Cheves Construction Company, IBCA-670-9-67 (Aug. 12, 1968)

The board denies a contractor's claim of changed conditions under a contract requiring the placing of buried drain pipes for the purpose of lowering a high-water table where exploratory drill logs in the contract showed that water would be encountered within two or three feet of ground level, and the contract specifications contained warnings of possible water overflow during the season when the work was to be performed; in

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions--Continued

addition, denial of the claim was based upon the appellant's failure to prove its allegation that in accordance with a normal engineering practice the drain pipe sizes specified by the Government should have been large enough not only to provide for a gradual lowering of the water table, but also for the construction contractor's dewatering and water control requirements.

Appeal of George A. Grant, Inc., IBCA-680-10-67 (Oct. 23, 1968)

A contractor, under a contract for construction of a bridge in which some specification drawings depicted that the normal water elevation was 1998 feet, and who encountered water at an average elevation of 2000.8 feet, was not entitled to relief under section (a) of the Changed Conditions clause on the ground that the Government had thereby misrepresented the elevation where examination of all the contract documents and a reasonable site investigation would have indicated that during the course of a one-year construction period the contractor would encounter higher water levels affecting its work and access thereto.

Appeal of Key, Inc. & Jones-Robertson, Inc., IBCA-690-12-67 (Nov. 29, 1968)

Changes and Extras

Where under a contract for the erection of transmission line towers of a new type the specifications required that the guy lines supporting the towers be drawn "snug but not excessively tight" and that thereafter there should be "no visible deformation of the tower," and where early in contract performance the parties by their conduct evidenced agreement that bringing the guy lines to a tension of 7,000 pounds would satisfy the requirements imposed by the general language of the specifications but subsequently the Government increased the tension requirements to 12,000 pounds, the Board finds that the imposition of the latter requirement constituted a constructive change and, pursuant to a stipulation of the parties, remanded the case to the contracting officer for determination of the amount of the equitable adjustment.

Appeal of COMPEC (A Joint Venture of Commonwealth Electric Co. and Power City Electric, Inc.), IBCA-573-6-66 (Jan. 4, 1968) 75 I. D. 1

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

Under a contract to clear a reservoir of trees, brush and debris in mountainous country at evevations (1) below 7,388 feet and (2) between 7,388 and 7,519.4 feet, by February 8, 1966, which provided that storage in the reservoir would begin "about November 1, 1965," and which required operations to be conducted so that clearing was completed in advance of water being impounded by a dam, a contractor, who encountered abnormally high water from sources other than the dam but who proceeded by increasing the size of his crew and substituting maunal labor for mechanical operations in order to comply with such provision, and who completed all work on November 19, 1965, was not entitled to additional compensation on the ground that his performance was accelerated, where (i) he did not request the Government to extend his time to perform or delay closing the dam; (ii) there is no proof of any Government conduct equivalent to an order to accelerate; (iii) he could have continued to perform some clearing both below and above 7,388 feet through February 8, 1966; and (iv) the contractor planned from the outset to complete all work by November.

Appeals of Humphrey Contracting Corporation, IBCA-555-4-66, IBCA-579-7-66 (Jan. 24, 1968)
75 I. D. 22

A contractor is not entitled to an adjustment allowing additional compensation in the absence of a contract clause providing for such an adjustment, where the wages paid to his employees are required to be increased by reason of Congressional amendment of the minimum wage provisions of the Fair Labor Standards Act, rather than by direction of the contracting officer.

Appeal of Metropolitan Patrol and Guards, Inc., IBCA-681-10-67 (Feb. 13, 1968)

A contractor who undertook to supply to the Government snow removal machines shown on current literature of the contractor to be equipped with rotary windshield wipers, is entitled to be compensated for installing, at the Government's insistence, rotary wipers on the machines, notwithstanding a general description in the contract of the machines to be furnished as including "all improvements in design and construction shown in the bidder's current literature for the model offered," where the contract called for "the latest current model concept as modified by those specifications"

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

and the windshield wiper specification allowed the successful bidder to install either less costly "heavy duty" wipers or rotary wipers.

Appeal of Edward R. Bacon Company, IBCA-646-5-67 (Feb. 20, 1968)

Where in its request for reconsideration the appellant asserts that the Board's finding that no change, actual or constructive, had occurred, as a result of delay in deliveries of Government-furnished steel, is unsupported by any substantial evidence, but fails to show that the indicia of change test had been incorrectly applied, the decision denying the appeal is affirmed.

Appeal of Mark W. Chisum Corporation, IBCA-540-1-66 (Feb. 20, 1968)

A claim considered under the "Changes" clause of a supply contract is denied where it was not asserted prior to final payment.

Appeal of Century Research Corporation, IBCA-688-11-67 (Mar. 18, 1968)

Under a contract providing that in case of difference between drawings and specifications, the specifications shall govern, where the specifications required that a sidewalk to be constructed should be 4 inches in depth, the contractor was entitled to an equitable adjustment for constructing a sidewalk 6 inches in depth as shown on a drawing, pursuant to a written order issued by the contracting officer.

Appeal of Perry and Wallis, Inc., IBCA-508-8-65 (Mar. 27, 1968)

A contractor's claim for additional compensation, made under a contract entered into with the Federal Government and providing for engineering services required for a Federal transmission line, was denied where it was based upon the allegation that requests from engineers and geologists employed by a municipal power agency caused the contractor to incur unanticipated expense in performing test drilling. There was no showing that the scope of the contract had been expanded to cover the municipal project by an official empowered to take such action.

Appeal of R. W. Millard and Associates, Inc., IBCA-663-9-67 (July 9, 1968)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

Where a prime contractor subcontracts additional or changed work required by an authorized change order, the prime contractor is not entitled, in the calculation of the equitable adjustment of the contract price, to a separate allowance representing the subcontractors' overhead and profit, where a contract provision specifically limits the allowance of a percentage of overhead and profit to a single expressed maximum fee to cover indirect costs and profit.

Appeal of Perry & Wallis, Inc., IBCA-617-1-67 (July 16, 1968)

The Board denies the Government's motion to dismiss an appeal as beyond the purview of its jurisdiction where it finds: (i) that a delay of approximately 30 days in supplying a contractor with Government-furnished steel had no significant impact upon the overall performance of the contract; and (ii) that the Government's action in furnishing large quantities of misfabricated steel not only disrupted the contractor's assembly and erection program as had been recognized by the contracting officer in a proposed amendment to the contract but on a rather short schedule job necessarily disrupted the succeeding program of conductor stringing as well, with the result that the costs shown to be attributable to the Government's action were found in both instances to stem from a constructive change.

Appeal of Power City Construction & Equipment, Inc., IBCA-490-4-65 (July 17, 1968) 75 I. D. 185

Under a contract for construction of a road, the Board finds that rejection by the contracting officer's representative of the subbase, following a visual inspection, after it was ready for application of the base course, and his direction to reprocess the subbase, were based upon an erroneous interpretation of the specifications and constituted a constructive change entitling the contractor to an equitable adjustment; but such adjustment may not include the contractor's cost of utilizing a commercial testing laboratory to establish that the Government's rejection was unjustified, since such a charge is an expense for preparing and prosecuting a claim and is unauthorized.

Where a road construction contract called for 310 tons of RC asphalt, which is not readily available, to be used as prime coat, and the contractor procured the entire supply necessary in advance, and the contracting officer thereafter changed the type to MC asphalt, the contractor was entitled to recover the cost of converting the unused RC asphalt to penetration asphalt (the most economic means of disposing of the excess).

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

Where a contractor under a road construction contract in which a certain pit was designated as the source of specified material was directed to blend the material produced with blow sand (it having been ascertained that the material produced did not comply with the specifications), an adjustment made by the Government to compensate the contractor therefor was inadequate in that the contractor was paid only at the unit price rate for the items blended and should also have received compensation for the cost of increased crushing and other difficulties in meeting the requirements of the specifications resulting from the blending.

Where the total amount of cover aggregate required by the Government was 1272.7 tons, instead of the 2230 tons estimated in the bid schedule, under a road construction contract providing for payment at unit prices only for work that was actually performed, and further providing for an adjustment of contract price in the event of increase or decrease in quantity only in several specified circumstances, in the absence of a showing that the exceptions are applicable, a contractor who overproduced cover aggregate was not entitled to be compensated therefor, since the possibility of an underrun was foreseeable and it appeared that the overproduction resulted from the contractor's inability to control production.

In a dispute over the quantity of unclassified excavation performed under a road construction contract, where the contractor's measurement was based upon the average-end-area method required by the contract, but was made after subbase material was in place, and the Government was unable to prove that it utilized that method, in the absence of a showing that the presence of the subbase resulted in an error in the contractor's calculation, the Board finds that the contractor established its claim by a preponderance of the evidence; however, contractor is not entitled to recover the cost of employing an independent engineering firm to perform the measurement, since such a charge is an expense of preparing and prosecuting a claim and is unauthorized.

Appeal of James Hamilton Construction Company and Hamilton's Equipment Rentals, Inc., IBCA-493-5-65 (July 18, 1968) 75 I. D. 207

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

The Board denies a Government action to dismiss an appeal as involving a claim not cognizable under the contract where, for reasons detailed in an earlier opinion in the same case, the Board finds that the actions of the Government's Supervisory Engineer--in assuming direction and control of the work and restricting the contractor's operations is a wholly unwarranted way--constituted a constructive change for which the appellant is entitled to be reimbursed to the extent it shows that the costs claimed are the natural and direct result of the Government's actions.

Appeal of Richey Construction Company,
IBCA-700-2-68 (Aug. 5, 1968)

Where a contractor under a contract calling for the construction in 90 days of an underground electrical distribution system; promptly submitted its proposed equipment list to the Government for advance approval and conditioned its orders upon such approval, as required by the contract, and the Government, having knowledge that delivery in compliance with the contract performance period was uncertain (because the contractor's supplier would not commence production until all details were approved) delayed in acting on such list and instead issued a change order changing the switches on transformers to be installed, without changing the contract completion date, the burden of the uncertainty of delivery was shifted to the Government and the contractor was entitled to an equitable adjustment extending the time of performance which reflected the full consequences of the change, including an allowance for the ensuing delay in delivery of the equipment, no showing having been made that the equipment could have been obtained more expeditiously elsewhere.

Appeal of Schurr & Finlay, Inc., IBCA-644-5-67
(Aug. 27, 1968) 75 I. D. 248

Where the Government made available a graded and compacted site to a contracting firm which proceeded to excavate foundations and footings, and the excavation work was destroyed by corrective Government action (regarding and recompaction), the necessity for the contractor to perform the foundation and footing work a second time was found by the Board to require an equitable adjustment in the appellant's favor pursuant to Clause 3, "Changes."

Appeal of Hunt Building Marts, Inc.,
IBCA-647-5-67 (Sept. 9, 1968)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

Contractor's photographs showing break in aluminum transmission conductor taken at scene in presence of Government inspectors immediately after a conductor broke and dropped to the ground substantially support contractor's claim that break was due to latent defect in conductor. Requirement by the Government for replacement of the broken conductor by the contractor constituted a constructive change and entitled contractor to an equitable adjustment consisting of his actual necessary costs in performing the extra work.

Appeal of R. C. Hughes Electric Co., Inc. and
Donovan Construction Co., A Joint Venture,
IBCA-662-9-67 (Sept. 11, 1968)

Giving great weight to the practical construction the parties had placed upon the terms of a contract that the appellant acknowledged to be ambiguous and noting that approximately five years elapsed before the contractor advanced an interpretation of the contract at variance with what appeared to be the mutual understanding of the parties as to the nature of the contractual obligations assumed by them, the Board finds that the contract for delivery of cement for the Glen Canyon Dam was a requirements contract and that the appellant was not entitled to additional compensation for the 87,691 barrels of cement delivered in excess of the estimated requirement of 3,000,000 barrels.

Appeals of American Cement Corporation,
IBCA-496-5-65 and IBCA-578-7-66 (Dec. 2, 1968)
75 I. D. 378

Conflicting Clauses

Under a contract providing that in case of difference between drawings and specifications, the specifications shall govern, where the specifications required that a sidewalk to be constructed should be 4 inches in depth, the contractor was entitled to an equitable adjustment for constructing a sidewalk 6 inches in depth as shown on a drawing, pursuant to a written order issued by the contracting officer.

Appeal of Perry and Wallis, Inc., IBCA-508-8-65
(Mar. 27, 1968)

CONSTRUCTION AND OPERATION--Continued

Conflicting Clauses--Continued

Inasmuch as (1) the title of a clause is declaratory of the intention of the parties and is expressive of the object of the clause, and (2) contract provisions should be interpreted, if possible, to avoid conflict, in connection with a contract for the construction of a 500 KV line, providing that footings were to be installed and towers erected on a unit price per site basis (which was to include the cost of excavation), the Board finds that clauses allowing additional compensation for excavation do not support a claim by a contractor for additional compensation for work in normal footings where it is clear from the title and context of such clauses that they are limited to excavate in special footings.

Appeal of Power Line Erectors, Inc., IBCA-637-5-67 (Dec. 18, 1968)

Drawings and Specifications

Where under a contract for the erection of transmission line towers of a new type the specifications required that the guy lines supporting the towers be drawn "snug but not excessively tight" and that thereafter there should be "no visible deformation of the tower," and where early in contract performance the parties by their conduct evidenced agreement that bringing the guy lines to a tension of 7,000 pounds would satisfy the requirements imposed by the general language of the specifications but subsequently the Government increased the tension requirements to 12,000 pounds, the Board finds that the imposition of the latter requirement constituted a constructive change and, pursuant to a stipulation of the parties, remanded the case to the contracting officer for determination of the amount of the equitable adjustment.

Appeal of COMPEC (A Joint Venture of Commonwealth Electric Co. and Power City Electric, Inc.), IBCA-573-6-66 (Jan. 4, 1968) 75 I. D. 1

A contractor who undertook to supply to the Government snow removal machines shown on current literature of the contractor to be equipped with rotary windshield wipers, is entitled to be compensated for installing, at the Government's insistence, rotary wipers on the machines, notwithstanding a general description in the contract of the machines to be furnished as including "all improvements in design and

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications --Continued

construction shown in the bidder's current literature for the model offered," where the contract called for "the latest current model concept as modified by those specifications" and the windshield wiper specification allowed the successful bidder to install either less costly "heavy duty" wipers or rotary wipers.

Appeal of Edward R. Bacon Company, IBCA-646-5-67 (Feb. 20, 1968)

Under a contract providing that in case of difference between drawings and specifications, the specifications shall govern, where the specifications required that a sidewalk to be constructed should be 4 inches in depth, the contractor was entitled to an equitable adjustment for constructing a sidewalk 6 inches in depth as shown on a drawing, pursuant to a written order issued by the contracting officer.

Appeal of Perry and Wallis, Inc., IBCA-508-8-65 (Mar. 27, 1968)

Under a contract for construction of a building and an adjoining open plaza, where the specifications require the use of an asphaltic lightweight concrete insulating fill for the plaza and roof similar to a brand-name material conforming to specifications supplied by a producer of the brand-name product, followed by a list of the required properties and characteristics of the material, and method of application, the contractor must establish by a preponderance of the evidence that the contracting officer erroneously determined that a different brand-name material offered as a substitute was not substantially equal to the material named in the contract, as required by other provisions of the contract.

Where the provisions of an invitation for bids clearly and explicitly require the bidder to furnish a material similar to a brand-name product, or a substitute material determined by the contracting officer to be equal thereto, the contractor, having remained silent during the bidding period without protest and having made no inquiry of the contracting officer as to the availability of such brand-name material, or of a material substantially equal to it, is not entitled after award to assert that the specification requirements are invalid for requiring the contractor to procure the material from a sole source (the contractor's post-award allegation being that it was unable to find a different source for a similar material).

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications --Continued

The use of a "brand name or equal" type of specification does not constitute a representation by the Government regarding the existence of acceptable substitutes for the brand-name product, nor does it constitute a representation that an existing substitute would receive approval prior to the submission by the contractor of data establishing the equality of such substitute.

Appeal of MSI Corporation, IBCA-554-4-66 (Apr. 16, 1968) 75 I. D. 89

The Board in reviewing the requirements of a recreation center construction contract held that it contained a requirement for the painting of a galvanized steel roof; further, it was found that the appellant had not submitted evidence to support its allegation that it is a practice in the trade not to paint galvanized steel.

Appeal of William F. Klingensmith, Inc., IBCA-669-9-67 (Apr. 26, 1968)

Under a supply contract calling for construction and installation of complete environmental growth chambers to fulfill prescribed performance requirements, contractor is obligated to complete electrical wiring connecting the interrelated components of equipment to make the chambers complete, operable units. All parts of the contract must be read as a whole so as to give the schedule and specifications that meaning which would be attached thereto by a reasonably intelligent person acquainted with all operative usages of the product to be supplied.

Appeal of Arctic Insulators & Constructors, Inc., IBCA-702-2-68 (Aug. 16, 1968)

The Government's contention that a provision of a road grading contract stating that the "average-end-area method shall be used in computing volumes of excavation and embankment" is modified by a paragraph appearing on a Drawing (entitled "General Notes and Quantity List") advising that quantities "have been computed by the average-end-area method with corrections for curvature and center of gravity on curved sections of the roadway" is rejected, since such paragraph lacks the expression of a contractual obligation, in contrast to the other paragraphs on the Drawing, and implication of the language necessary to express a contractual obligation would conflict with the express provision.

Appeal of Hagen Construction Company, Inc., IBCA-666-9-67 (Sept. 18, 1968)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications --Continued

A claim for additional compensation under the contract is denied where the Board finds that the contractor's interpretation of the contract terms fails to give effect to the clear requirements of the specifications. To the extent that the claim may involve a possible mistake-in-bid, the Board notes that it is without jurisdiction in the matter.

Appeal of Campbell & Speir, IBCA-705-2-68 (Dec. 10, 1968)

Inasmuch as (1) the title of a clause is declaratory of the intention of the parties and is expressive of the object of the clause, and (2) contract provisions should be interpreted, if possible, to avoid conflict, in connection with a contract for the construction of a 500 KV line, providing that footings were to be installed and towers erected on a unit price per site basis (which was to include the cost of excavation), the Board finds that clauses allowing additional compensation for excavation do not support a claim by a contractor for additional compensation for work in normal footings where it is clear from the title and context of such clauses that they are limited to excavate in special footings.

Appeal of Power Line Erectors, Inc., IBCA-637-5-67 (Dec. 18, 1968)

Estimated Quantities

Where the total amount of cover aggregate required by the Government was 1272.7 tons, instead of the 2230 tons estimated in the bid schedule, under a road construction contract providing for payment at unit prices only for work that was actually performed, and further providing for an adjustment of contract price in the event of increase or decrease in quantity only in several specified circumstances, in the absence of a showing that the exceptions are applicable, a contractor who overproduced cover aggregate was not entitled to be compensated therefor, since the possibility of an underrun was foreseeable and it appeared that the overproduction resulted from the contractor's inability to control production.

Appeal of James Hamilton Construction Company and Hamilton's Equipment Rentals, Inc., IBCA-493-5-65 (July 18, 1968) 75 I. D. 207

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Estimated Quantities--Continued

Giving great weight to the practical construction the parties had placed upon the terms of a contract that the appellant acknowledged to be ambiguous and noting that approximately five years elapsed before the contractor advanced an interpretation of the contract at variance with what appeared to be the mutual understanding of the parties as to the nature of the contractual obligations assumed by them, the Board finds that the contract for delivery of cement for the Glen Canyon Dam was a requirements contract and that the appellant was not entitled to additional compensation for the 87,691 barrels of cement delivered in excess of the estimated requirement of 3,000,000 barrels.

Appeals of American Cement Corporation, IBCA-496-5-65 and IBCA-578-7-66 (Dec. 2, 1968) 75 I. D. 378

Under a contract containing estimated quantities, unit prices and a variation in quantities provision authorizing an equitable adjustment if the work actually required varied from the estimated quantities in excess of stated percentages, the Board finds (i) that the contract language does not support the appellant's contention that it is entitled to a greater equitable adjustment than had been allowed by the contracting officer; (ii) that no special circumstances were shown to exist warranting a restrictive interpretation of the variation in quantities provisions; and (iii) that the record is devoid of any evidence showing that the equitable adjustment for the overrun quantities involved should reflect the same unit price as had previously been agreed upon in a change order for performing similar type work.

Appeal of United Nations Constructors, Inc., IBCA-686-11-67 (Dec. 31, 1968)

General Rules of Construction

A contractor who undertook to supply to the Government snow removal machines shown on current literature of the contractor to be equipped with rotary windshield wipers, is entitled to be compensated for installing, at the Government's insistence, rotary wipers on the machines, notwithstanding a general description in the contract of the machines to be furnished as including "all improvements in design and

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction --Continued

construction shown in the bidder's current literature for the model offered," where the contract called for "the latest current model concept as modified by those specifications" and the windshield wiper specification allowed the successful bidder to install either less costly "heavy duty" wipers or rotary wipers.

Appeal of Edward R. Bacon Company, IBCA-646-5-67 (Feb. 20, 1968)

The use of a "brand name or equal" type of specification does not constitute a representation by the Government regarding the existence of acceptable substitutes for the brand-name product, nor does it constitute a representation that an existing substitute would receive approval prior to the submission by the contractor of data establishing the equality of such substitute.

Appeal of MSI Corporation, IBCA-554-4-66 (Apr. 16, 1968) 75 I. D. 89

Under a supply contract calling for construction and installation of complete environmental growth chambers to fulfill prescribed performance requirements, contractor is obligated to complete electrical wiring connecting the interrelated components of equipment to make the chambers complete, operable units. All parts of the contract must be read as a whole so as to give the schedule and specifications that meaning which would be attached thereto by a reasonably intelligent person acquainted with all operative usages of the product to be supplied.

Appeal of Arctic Insulators & Constructors, Inc., IBCA-702-2-68 (Aug. 16, 1968)

The Government's contention that a provision of a road grading contract stating that the "average-end-area method shall be used in computing volumes of excavation and embankment" is modified by a paragraph appearing on a Drawing (entitled "General Notes and Quantity List") advising that quantities "have been computed by the average-end-area method with corrections for curvature and center of gravity on curved sections of the roadway" is rejected, since such paragraph lacks the expression of a contractual obligation, in contrast to the other paragraphs on the Drawing, and implication of the language necessary to express a contractual obligation would conflict with the express provision.

Appeal of Hagen Construction Company, Inc., IBCA-666-9-67 (Sept. 18, 1968)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction --Continued

The Board denies a claim for "Unnecessary Accelerated Construction Costs" where it finds (i) that the appellant has failed to offer any convincing evidence to show that a particular letter from the contracting officer relied upon by the appellant could be properly construed as an order for the delivery of cement thereby furnishing a predicate for the recovery of the costs claimed under the "Suspension of Deliveries" clause when cement was not called for during 1959; and (ii) that the appellant also failed to show by a preponderance of the evidence that the action of the contracting officer in refusing to agree in advance to pay a portion of a suggested wage increase under a related contract (the prime contract for the construction of the dam) prolonged a strike needlessly and thereby resulted in the incurrence of a portion of the costs for which the claim was made.

Appeals of American Cement Corporation, IBCA-496-5-65 and IBCA-578-7-66 (Dec. 2, 1968) 75 I. D. 378

Inasmuch as (1) the title of a clause is declaratory of the intention of the parties and is expressive of the object of the clause, and (2) contract provisions should be interpreted, if possible, to avoid conflict, in connection with a contract for the construction of a 500 KV line, providing that footings were to be installed and towers erected on a unit price per site basis (which was to include the cost of excavation), the Board finds that clauses allowing additional compensation for excavation do not support a claim by a contractor for additional compensation for work in normal footings where it is clear from the title and context of such clauses that they are limited to excavate in special footings.

Appeal of Power Line Erectors, Inc., IBCA-637-5-67 (Dec. 18, 1968)

Under a contract containing estimated quantities, unit prices and a variation in quantities provision authorizing an equitable adjustment if the work actually required varied from the estimated quantities in excess of stated percentages, the Board finds (i) that the contract language does not support the appellant's contention that it is entitled to a greater equitable adjustment than had been allowed by the contracting officer; (ii) that no special circumstances were shown to exist warranting a restrictive interpretation of the variation in quantities provisions; and (iii) that the record is devoid of any evidence showing that the equitable adjustment for the overrun quantities involved should reflect the same unit price as

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction --Continued

had previously been agreed upon in a change order for performing similar type work.

Appeal of United Nations Constructors, Inc., IBCA-686-11-67 (Dec. 31, 1968)

Intent of Parties

The Government's contention that a provision of a road grading contract stating that the "average-end-area method shall be used in computing volumes of excavation and embankment" is modified by a paragraph appearing on a Drawing (entitled "General Notes and Quantity List") advising that quantities "have been computed by the average-end-area method with corrections for curvature and center of gravity on curved sections of the roadway" is rejected, since such paragraph lacks the expression of a contractual obligation, in contrast to the other paragraphs on the Drawing, and implication of the language necessary to express a contractual obligation would conflict with the express provision.

Appeal of Hagen Construction Company, Inc., IBCA-666-9-67 (Sept. 18, 1968)

Where a negotiated contract for engineering services contained a liquidated damages provision that incorporated a schedule of accounts (per day) to be paid by the contractor if five designated parts of the contract were not completed within time periods fixed therein, the Board disapproved the Government's attempt to construe another general contract clause (relating to the contractor's responsibility for damages incurred because the contractor did not meet the requirements of the contract) as allowing the assessment of actual damages that allegedly were caused by inadequate or inacurrate surveying work which was (i) detected and corrected prior to completion of the project; (ii) accepted by the Government as its responsibility under an agreement which deleted work from the contract and established a substantial completion date, or (iii) a contributing cause of the contractor's failure to deliver one item on time, for which an assessment of liquidated damages was made (the contractor met its obligations under the other four parts of the

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Intent of Parties--Continued

liquidated damages provision). The Board based the disapproval upon its conclusion that, in the circumstances, the Government was improperly attempting to recover both actual and liquidated damages.

Appeal of Desert Sun Engineering Corporation, IBCA-725-8-68 (Dec. 31, 1968) 75 I. D. 424

Labor Laws

A contractor is not entitled to an adjustment allowing additional compensation in the absence of a contract clause providing for such an adjustment, where the wages paid to his employees are required to be increased by reason of Congressional amendment of the minimum wage provisions of the Fair Labor Standards Act, rather than by direction of the contracting officer.

Appeal of Metropolitan Patrol and Guards, Inc., IBCA-681-10-67 (Feb. 13, 1968)

Where a contract for the construction of a road required a contractor to "observe and comply with all Federal, State and local laws," but did not specifically provide for compliance with the Fair Labor Standards Act, and the contractor was ordered by the U. S. Labor Department to pay overtime wages under the FLSA, a claim by the contractor for reimbursement of such overtime wages paid, grounded upon an alleged misrepresentation by the procuring agency of the applicability of the FLSA to the work will be dismissed as outside the jurisdiction of the Board.

Appeal of James Hamilton Construction Company and Hamilton's Equipment Rentals, Inc., IBCA-493-5-65 (July 18, 1968) 75 I. D. 207

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Modification of Contracts

A contractor's claim for additional compensation, made under a contract entered into with the Federal Government and providing for engineering services required for a Federal transmission line, was denied where it was based upon the allegation that requests from engineers and geologists employed by a municipal power agency caused the contractor to incur unanticipated expense in performing test drilling. There was no showing that the scope of the contract had been expanded to cover the municipal project by an official empowered to take such action.

Appeal of R. W. Millard and Associates, Inc., IBCA-663-9-67 (July 9, 1968)

Notices

A claim based upon an allegation that a Government project supervisor required the work force of a construction contractor to stand aside and give first priority to the activities of another Government contractor in a project area containing limited working space was denied because it was made for a claim period during which the appellant gave no notice that a constructive suspension of work had been caused by the acts of a Government representative--as to one portion of the claim period the appellant provided no notification of any kind as to alleged acts of the Government causing delays, hindrances, interferences or suspension, and as to the remainder it had requested time extensions only. Because a supplemental agreement provided for the acceleration of work during the claim period, it was of particular importance that the contracting officer be given notice, in order to afford him an opportunity to investigate whether a reasonable program of coordination of the activities of the two contractors had been worked out, and to attempt to remedy any unfair scheduling.

Notification of a monetary claim that is given under a provision such as the Changes clause, Changed Conditions clause, or an Extra Work clause may in some circumstances be treated as a proper notice under the standard construction contract Suspension of Work clause (which clause bars claims for costs incurred more than 20 days prior to the contracting officer's receipt of notice of a constructive suspension of work); however, an appellant's notification of

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Notices--Continued

a claim for an extension of time based upon delays resulting from the operations of another contractor (or the Government's grant of such extension) will not constitute a notice under the Suspension of Work clause.

Appeal of Hoel-Steffen Construction Company, IBCA-656-7-67 (Mar. 18, 1968) 75 I. D. 41

Giving great weight to the practical construction the parties had placed upon the terms of a contract that the appellant acknowledged to be ambiguous and noting that approximately five years elapsed before the contractor advanced an interpretation of the contract at variance with what appeared to be the mutual understanding of the parties as to the nature of the contractual obligations assumed by them, the Board finds that the contract for delivery of cement for the Glen Canyon Dam was a requirements contract and that the appellant was not entitled to additional compensation for the 87,691 barrels of cement delivered in excess of the estimated requirement of 3,000,000 barrels.

Appeals of American Cement Corporation, IBCA-496-5-65 and IBCA-578-7-66 (Dec. 2, 1968) 75 I. D. 378

Protests

Where the provisions of an invitation for bids clearly and explicitly require the bidder to furnish a material similar to a brand-name product, or a substitute material determined by the contracting officer to be equal thereto, the contractor, having remained silent during the bidding period without protest and having made no inquiry of the contracting officer as to the availability of such brand-name material, or of a material substantially equal to it, is not entitled after award to assert that the specification requirements are invalid for requiring the contractor to procure the material from a sole source (the contractor's post-award allegation being that it was unable to find a different source for a similar material).

Appeal of MSI Corporation, IBCA-554-4-68 (Apr. 16, 1968) 75 I. D. 89

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Subcontractors and Suppliers

Under a contract for supplying four gate hoists for a dam, and providing as to each hoist for assessment of liquidated damages for each day of delay, where the contractor and its first-tier subcontractor were tardy in ordering steel from a second-tier supplier, such delays in purchasing will be taken into account and deducted from extensions of time for performance that are otherwise allowable because of delays in delivery of steel due to the fault of the second-tier supplier (pursuant to the decision in Schweigert, Inc. v. United States, Ct. Cl. No. 26-66, December 15, 1967).

Appeal of Galland-Henning Manufacturing Company, IBCA-534-12-65 (Mar. 29, 1968) 75 I. D. 72

Where a prime contractor subcontracts additional or changed work required by an authorized change order, the prime contractor is not entitled, in the calculation of the equitable adjustment of the contract price, to a separate allowance representing the subcontractors' overhead and profit, where a contract provision specifically limits the allowance of a percentage of overhead and profit to a single expressed maximum fee to cover indirect costs and profit.

Appeal of Perry & Wallis, Inc., IBCA-617-1-67 (July 16, 1968)

Third Persons

A contractor's claim for additional compensation, made under a contract entered into with the Federal Government and providing for engineering services required for a Federal transmission line, was denied where it was based upon the allegation that requests from engineers and geologists employed by a municipal power agency caused the contractor to incur unanticipated expense in performing test drilling. There was no showing that the scope of the contract had been expanded to cover the municipal project by an official empowered to take such action.

Appeal of R. W. Millard and Associates, Inc., IBCA-663-9-67 (July 9, 1968)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Third Persons--Continued

A construction contractor's claim for extra compensation for stand-by costs, alleged interference and inefficient work production based on alleged changed conditions created by a labor dispute engendered by third persons causing a work stoppage, will be dismissed for want of jurisdiction on the Government's motion as being a claim for administrative relief not cognizable under the Changed Conditions clause of Standard Form 23A or any other provision of the contract. Contractor's associated claims for time extensions are found, however, to be within the jurisdiction of the Board.

Appeal of Bateson-Cheves Construction Company, IBCA-670-9-67 (Aug. 12, 1968)

Waiver and Estoppel

Where the provisions of an invitation for bids clearly and explicitly require the bidder to furnish a material similar to a brand-name product, or a substitute material determined by the contracting officer to be equal thereto, the contractor, having remained silent during the bidding period without protest and having made no inquiry of the contracting officer as to the availability of such brand-name material, or of a material substantially equal to it, is not entitled after award to assert that the specification requirements are invalid for requiring the contractor to procure the material from a sole source (the contractor's post-award allegation being that it was unable to find a different source for a similar material).

Appeal of MSI Corporation, IBCA-554-4-68 (Apr. 16, 1968) 75 I. D. 89

DISPUTES AND REMEDIES

Generally

Adhering to principles enunciated in a prior decision, the Board finds that a memorandum from a Government employee to his superior containing a recommendation as to settlement of a claim constituted a privileged

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Generally--Continued

communication to which the appellant was not entitled, insofar as the nonfactual portions of such memorandum are concerned.

Appeal of Power City Construction & Equipment, Inc., IBCA-490-4-65 (July 17, 1968) 75 I. D. 185

Burden of Proof

In a case submitted on the record involving a termination for default of a contract for planting trees on the basis of failure to make satisfactory progress, the Board finds that the Government has failed to establish a lack of progress to the extent necessary to justify a termination for default, noting, inter alia, an unexplained delay of 48 days in issuing the notice to proceed that could have materially contributed to the contractor's difficulties in performing the contract.

Appeal of Robert Hart, IBCA-659-8-67 (Apr. 10, 1968)

Under a contract for construction of a building and an adjoining open plaza, where the specifications require the use of an asphaltic lightweight concrete insulating fill for the plaza and roof similar to a brand-name material conforming to specifications supplied by a producer of the brand-name product, followed by a list of the required properties and characteristics of the material, and method of application, the contractor must establish by a preponderance of the evidence that the contracting officer erroneously determined that a different brand-name material offered as a substitute was not substantially equal to the material named in the contract, as required by other provisions of the contract.

Appeal of MSI Corporation, IBCA-554-4-66 (Apr. 16, 1968) 75 I. D. 89

Where in the course of performing a contract for rental of equipment a bulldozer was damaged apparently as a result of the negligence of the operator who, together with the bulldozer, had been furnished for the performance of work to be designated by the Government and where the appellant contended that the negligence of the operator was imputable to the Government apparently on the theory of the loan-servant doctrine, the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

Board finds that the doctrine is inapplicable to the case presented and therefore denies the claim asserted for the cost of repairing the damaged bulldozer and for a portion of the expenses related to the transportation of the bulldozer to the point of repair.

Appeal of Northern Commercial Company, IBCA-640-5-67 (May 23, 1968)

In a dispute over the quantity of unclassified excavation performed under a road construction contract, where the contractor's measurement was based upon the average-end-area method required by the contract, but was made after subbase material was in place, and the Government was unable to prove that it utilized that method, in the absence of a showing that the presence of the subbase resulted in an error in the contractor's calculation, the Board finds that the contractor established its claim by a preponderance of the evidence; however, contractor is not entitled to recover the cost of employing an independent engineering firm to perform the measurement, since such a charge is an expense of preparing and prosecuting a claim and is unauthorized.

Appeal of James Hamilton Construction Company and Hamilton's Equipment Rentals, Inc., IBCA-493-5-65 (July 18, 1968) 75 I. D. 207

Where an appeal record contains no evidence to support a contractor's allegation that a time extension should be granted because unusually low water levels were encountered on a dredging project, the appeal will be denied.

Appeal of Morauer & Hartzell, Inc., IBCA-627-2-67 (Sept. 26, 1968)

The board denies a contractor's claim of changed conditions under a contract requiring the placing of buried drain pipes for the purpose of lowering a high-water table where exploratory drill logs in the contract showed that water would be encountered within two or three feet of ground level, and the contract specifications contained warnings of possible water overflow during the season when the work was to be performed; in addition, denial of the claim was based upon the appellant's failure to prove its allegation that in accordance with a normal engineering practice the drain pipe sizes specified by the Government should have been large enough not only to provide for a gradual lowering of the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

water table, but also for the construction contractor's dewatering and water control requirements.

Appeal of George A. Grant, Inc., IBCA-680-10-67 (Oct. 23, 1968)

The Board denies a claim for "Unnecessary Accelerated Construction Costs" where it finds (i) that the appellant has failed to offer any convincing evidence to show that a particular letter from the contracting officer relied upon by the appellant could be properly construed as an order for the delivery of cement thereby furnishing a predicate for the recovery of the costs claimed under the "Suspension of Deliveries" clause when cement was not called for during 1959; and (ii) that the appellant also failed to show by a preponderance of the evidence that the action of the contracting officer in refusing to agree in advance to pay a portion of a suggested wage increase under a related contract (the prime contract for the construction of the dam) prolonged a strike needlessly and thereby resulted in the incurrence of a portion of the costs for which the claim was made.

Appeals of American Cement Corporation, IBCA-496-5-65 and IBCA-578-7-66 (Dec. 2, 1968) 75 I. D. 378

Where an appeal record contains no evidence to support a contractor's allegation that a time extension should be granted because of interference by another Government contractor, the appeal will be denied. With respect to a second request the Board found that while a contractor is entitled to sufficient time to complete a major part of the contract work which was delayed by the Government, when the performance time as extended made adequate provision for the delayed work to have been completed prior to the time liquidated damages were assessed, there is no justification for further extensions of time.

Appeal of Young Associates, Inc., IBCA-557-4-66 (Dec. 4, 1968)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages

Liquidated Damages

Under a contract for supplying four gate hoists for a dam, and providing as to each hoist for assessment of liquidated damages for each day of delay, where the contractor and its first-tier subcontractor were tardy in ordering steel from a second-tier supplier, such delays in purchasing will be taken into account and deducted from extensions of time for performance that are otherwise allowable because of delays in delivery of steel due to the fault of the second-tier supplier (pursuant to the decision in Schweigert, Inc. v. United States, Ct. Cl. No. 26-66, December 15, 1967).

Appeal of Galland-Henning Manufacturing Company, IBCA-534-12-65 (Mar. 29, 1968) 75 I. D. 72

Where a contractor under a contract calling for the construction in 90 days of an underground electrical distribution system, promptly submitted its proposed equipment list to the Government for advance approval and conditioned its orders upon such approval, as required by the contract, and the Government, having knowledge that delivery in compliance with the contract performance period was uncertain (because the contractor's supplier would not commence production until all details were approved) delayed in acting on such list and instead issued a change order changing the switches on transformers to be installed, without changing the contract completion date, the burden of the uncertainty of delivery was shifted to the Government and the contractor was entitled to an equitable adjustment extending the time of performance which reflected the full consequences of the change, including an allowance for the ensuing delay in delivery of the equipment, no showing having been made that the equipment could have been obtained more expeditiously elsewhere.

Appeal of Schurr & Finlay, Inc., IBCA-644-5-67 (Aug. 27, 1968) 75 I. D. 248

Where a negotiated contract for engineering services contained a liquidated damages provision that incorporated a schedule of accounts (per day) to be paid by the contractor if five designated parts of the contract were not completed within time periods fixed therein, the Board disapproved the Government's attempt to construe another general contract clause (relating to the contractor's responsibility for damages incurred because the contractor did not meet the requirements of the contract) as allowing the assessment of actual damages that allegedly were caused by inadequate or inacurrate

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Liquidated Damages--Continued

surveying work which was (i) detected and corrected prior to completion of the project; (ii) accepted by the Government as its responsibility under an agreement which deleted work from the contract and established a substantial completion date, or (iii) a contributing cause of the contractor's failure to deliver one item on time, for which an assessment of liquidated damages was made (the contractor met its obligations under the other four parts of the liquidated damages provision). The Board based the disapproval upon its conclusion that, in the circumstances, the Government was improperly attempting to recover both actual and liquidated damages.

Appeal of Desert Sun Engineering Corporation, IBCA-725-8-68 (Dec. 31, 1968) 75 I. D. 424

Measurement

When under a timber sales contract the purchaser is liable for the full purchase price, he must pay that amount even though he does not remove all the timber or the amount of the timber available to him under the contract does not come up the estimated volume; he is, however, to be given credit for the amount he has paid and the value of the timber remaining uncut less the costs of conducting a resale. He is also liable for the fixed amount he agreed to pay the United States for rehabilitation work in lieu of doing such work himself.

Leslie G. Caughman, A-30890 (Feb. 21, 1968)

The Board reduced the Government's assessment of excess costs against a construction contracting firm whose contract had been terminated for default, where it was found that the completion contract had been awarded under a deficient reprocurement plan formulated by the Government, under which the completing contractor was able to submit a bid that resulted in a final total contract return to the completing contractor which was substantially more than would have been received by the apparent second low bidder if the project had been finished by the latter under the completion contract.

Appeal of Gardner Construction Company, IBCA-615-1-67 (Apr. 17, 1968)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Measurement--Continued

Finding that the claims involved had been submitted on a total-cost basis and that the record shows the contractor to have been responsible for a significant portion of the costs for which claims had been made, the Board determines the equitable adjustment to which the appellant is entitled by resort to the so-called "jury-verdict" approach.

Appeal of Power City Construction & Equipment, Inc., IBCA-490-4-65 (July 17, 1968) 75 I. D. 185

Equitable Adjustments

A contractor is not entitled to an adjustment allowing additional compensation in the absence of a contract clause providing for such an adjustment, where the wages paid to his employees are required to be increased by reason of Congressional amendment of the minimum wage provisions of the Fair Labor Standards Act, rather than by direction of the contracting officer.

Appeal of Metropolitan Patrol and Guards, Inc., IBCA-681-10-67 (Feb. 13, 1968)

Where a prime contractor subcontracts additional or changed work required by an authorized change order, the prime contractor is not entitled, in the calculation of the equitable adjustment of the contract price, to a separate allowance representing the subcontractors' overhead and profit, where a contract provision specifically limits the allowance of a percentage of overhead and profit to a single expressed maximum fee to cover indirect costs and profit.

Appeal of Perry & Wallis, Inc., IBCA-617-1-67 (July 16, 1968)

Finding that the claims involved had been submitted on a total-cost basis and that the record shows the contractor to have been responsible for a significant portion of the costs for which claims had been made, the Board determines the equitable adjustment

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

to which the appellant is entitled by resort to the so-called "jury-verdict" approach.

Appeal of Power City Construction & Equipment, Inc., IBCA-490-4-65 (July 17, 1968) 75 I. D. 185

Where a contract for the construction of a road required a contractor to "observe and comply with all Federal, State and local laws," but did not specifically provide for compliance with the Fair Labor Standards Act, and the contractor was ordered by the U. S. Labor Department to pay overtime wages under the FLSA, a claim by the contractor for reimbursement of such overtime wages paid, grounded upon an alleged misrepresentation by the procuring agency of the applicability of the FLSA to the work will be dismissed as outside the jurisdiction of the Board.

Under a contract for construction of a road, the Board finds that rejection by the contracting officer's representative of the subbase, following a visual inspection, after it was ready for application of the base course, and his direction to reprocess the subbase, were based upon an erroneous interpretation of the specifications and constituted a constructive change entitling the contractor to an equitable adjustment; but such adjustment may not include the contractor's cost of utilizing a commercial testing laboratory to establish that the Government's rejection was unjustified, since such a charge is an expense for preparing and prosecuting a claim and is unauthorized.

Where a road construction contract called for 310 tons of RC asphalt, which is not readily available, to be used as prime coat, and the contractor procured the entire supply necessary in advance, and the contracting officer thereafter changed the type to MC asphalt, the contractor was entitled to recover the cost of converting the unused RC asphalt to penetration asphalt (the most economic means of disposing of the excess).

Where a contractor under a road construction contract in which a certain pit was designated as the source of specified material was directed to blend the material produced with blow sand (it having been ascertained that the material produced did not comply with the specifications), an adjustment made by the Government to compensate the contractor therefor was inadequate in that the contractor was paid only at the unit price rate for the items blended and should also have received compensation for the cost of increased crushing and other difficulties in meeting the requirements of the specifications resulting from the blending.

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

Where the total amount of cover aggregate required by the Government was 1272.7 tons, instead of the 2230 tons estimated in the bid schedule, under a road construction contract providing for payment at unit prices only for work that was actually performed, and further providing for an adjustment of contract price in the event of increase or decrease in quantity only in several specified circumstances, in the absence of a showing that the exceptions are applicable, a contractor who overproduced cover aggregate was not entitled to be compensated therefor, since the possibility of an underrun was foreseeable and it appeared that the overproduction resulted from the contractor's inability to control production.

In a dispute over the quantity of unclassified excavation performed under a road construction contract, where the contractor's measurement was based upon the average-end-area method required by the contract, but was made after subbase material was in place, and the Government was unable to prove that it utilized that method, in the absence of a showing that the presence of the subbase resulted in an error in the contractor's calculation, the Board finds that the contractor established its claim by a preponderance of the evidence; however, contractor is not entitled to recover the cost of employing an independent engineering firm to perform the measurement, since such a charge is an expense of preparing and prosecuting a claim and is unauthorized.

Appeal of James Hamilton Construction Company and Hamilton's Equipment Rentals, Inc., IBCA-493-5-65 (July 18, 1968) 75 I. D. 207

Where a contractor under a contract calling for the construction in 90 days of an underground electrical distribution system, promptly submitted its proposed equipment list to the Government for advance approval and conditioned its orders upon such approval, as required by the contract, and the Government, having knowledge that delivery in compliance with the contract performance period was uncertain (because the contractor's supplier would not commence production until all details were approved) delayed in acting on such list and instead issued a change order changing the switches on transformers to be installed, without changing the contract completion date, the burden of the uncertainty of delivery was shifted to the Government and the contractor was entitled to an equitable adjustment extending the time of performance which reflected the full consequences of the change, including an allowance for the ensuing delay in delivery of the equipment, no showing having been made that

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

the equipment could have been obtained more expeditiously elsewhere.

Appeal of Schurr & Finlay, Inc., IBCA-644-5-67 (Aug. 27, 1968) 75 I. D. 248

The Board denies a claim for "Unnecessary Accelerated Construction Costs" where it finds (i) that the appellant has failed to offer any convincing evidence to show that a particular letter from the contracting officer relied upon by the appellant could be properly construed as an order for the delivery of cement thereby furnishing a predicate for the recovery of the costs claimed under the "Suspension of Deliveries" clause when cement was not called for during 1959; and (ii) that the appellant also failed to show by a preponderance of the evidence that the action of the contracting officer in refusing to agree in advance to pay a portion of a suggested wage increase under a related contract (the prime contract for the construction of the dam) prolonged a strike needlessly and thereby resulted in the incurrence of a portion of the costs for which the claim was made.

Appeals of American Cement Corporation, IBCA-496-5-65 and IBCA-578-7-66 (Dec. 2, 1968) 75 I. D. 378

A claim for additional compensation under the contract is denied where the Board finds that the contractor's interpretation of the contract terms fails to give effect to the clear requirements of the specifications. To the extent that the claim may involve a possible mistake-in-bid, the Board notes that it is without jurisdiction in the matter.

Appeal of Campbell & Speir, IBCA-705-2-68 (Dec. 10, 1968)

Under a contract containing estimated quantities, unit prices and a variation in quantities provision authorizing an equitable adjustment if the work actually required varied from the estimated quantities in excess of stated percentages, the Board finds (i) that the contract language does not support the appellant's contention that it is entitled to a greater equitable adjustment than had been allowed by the contracting officer; (ii) that no special circumstances were shown to exist warranting a restrictive interpretation of the variation in quantities provisions; and (iii) that the record is devoid of any evidence showing that the equitable adjustment for the overrun quantities involved should reflect the same unit price as

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

had previously been agreed upon in a change order for performing similar type work.

Appeal of United Nations Constructors, Inc., IBCA-686-11-67 (Dec. 31, 1968)

Jurisdiction

Where delay by the Government in furnishing drawings under a contract for the construction and completion of earthwork, pipelines and structures required a contractor to reschedule its operations, an appeal seeking reimbursement for the expense resulting from such delay will be dismissed without a hearing as being outside the Board's jurisdiction in the absence of a Suspension of Work clause or a similar provision, the Changes clause being inapplicable to such a claim.

Appeal of Allison and Haney, Inc., IBCA-642-5-67 (Feb. 7, 1968)

A claim for additional compensation based on a delay by the Government in furnishing an outage (a period when a transmission line is deenergized) will be dismissed as outside the jurisdiction of the Board where the contract contains no "pay-for-delay" type clause.

Appeal of James Knox, dba JaK Enterprises, IBCA-684-11-67 (Feb. 13, 1968)

A claim considered under the "Changes" clause of a supply contract is denied where it was not asserted prior to final payment.

Appeal of Century Research Corporation, IBCA-688-11-67 (Mar. 18, 1968)

The Board denies the Government's motion to dismiss an appeal as beyond the purview of its jurisdiction where it finds: (i) that a delay of approximately 30 days in supplying a contractor with Government-furnished steel had no significant impact upon the overall performance of the contract; and (ii) that the Government's action in furnishing large quantities of misfabricated steel not only

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

disrupted the contractor's assembly and erection program as had been recognized by the contracting officer in a proposed amendment to the contract but on a rather short schedule job necessarily disrupted the succeeding program of conductor stringing as well, with the result that the costs shown to be attributable to the Government's action were found in both instances to stem from a constructive change.

Appeal of Power City Construction & Equipment, Inc., IBCA-490-4-65 (July 17, 1968) 75 I. D. 185

Where a contract for the construction of a road required a contractor to "observe and comply with all Federal, State and local laws," but did not specifically provide for compliance with the Fair Labor Standards Act, and the contractor was ordered by the U. S. Labor Department to pay overtime wages under the FLSA, a claim by the contractor for reimbursement of such overtime wages paid, grounded upon an alleged misrepresentation by the procuring agency of the applicability of the FLSA to the work will be dismissed as outside the jurisdiction of the Board.

Appeal of James Hamilton Construction Company and Hamilton's Equipment Rentals, Inc., IBCA-493-5-65 (July 18, 1968) 75 I. D. 207

A construction contractor's claim for extra compensation for stand-by costs, alleged interference and inefficient work production based on alleged changed conditions created by a labor dispute engendered by third persons causing a work stoppage, will be dismissed for want of jurisdiction on the Government's motion as being a claim for administrative relief not cognizable under the Changed Conditions clause of Standard Form 23A or any other provision of the contract. Contractor's associated claims for time extensions are found, however, to be within the jurisdiction of the Board.

Appeal of Bateson-Cheves Construction Company, IBCA-670-9-67 (Aug. 12, 1968)

A decision dismissing for lack of jurisdiction a construction contractor's claim, resulting from a work stoppage arising out of a labor dispute between the contractor and a third party, because the claim is not cognizable under any provision of the contract, will be affirmed upon reconsideration, without a hearing, since the scheduling of a hearing would serve no useful purpose in the absence of a showing of newly-discovered evidence or other basis upon which

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

to hold the Government responsible for the acts of the third party.

Appeal of Bateson-Cheves Construction Company, IBCA-670-9-67 (Oct. 8, 1968)

In a case where a contractor's claim for constructive change based upon practical impossibility had not been presented to the contracting officer prior to the filing of the notice of appeal, the Board denies a Government motion to dismiss such claim on the ground that in the circumstances presented a stay of proceedings pending the issuance of a finding and the taking of a timely appeal therefrom would facilitate the orderly presentation and consideration of the claims involved in the appeal. The Board also denies a Government motion to dismiss portions of the appeal on the ground of lack of specificity in the notice of appeal where it finds sufficient information in the record to apprise the Government of the essential allegations of the appellant's case and thereby permit the Government to adequately prepare its case for hearing.

Where there are fact questions common to the contractor's claims of excusable delay and practical impossibility on the one hand and the Government's claim of common law damages for late delivery on the other, the Board concludes that it will retain jurisdiction over the latter claim pending the development of a complete administrative record without prejudice, however, to the Government's right to file a motion to dismiss the claim for common law damages at the time its post-hearing brief is submitted.

Appeal of McGraw Edison Company, IBCA-699-2-68 (Oct. 28, 1968) 75 I. D. 350

A claim for additional compensation under the contract is denied where the Board finds that the contractor's interpretation of the contract terms fails to give effect to the clear requirements of the specifications. To the extent that the claim may involve a possible mistake-in-bid, the Board notes that it is without jurisdiction in the matter.

Appeal of Campbell & Speir, IBCA-705-2-68 (Dec. 10, 1968)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Substantial Evidence

The Board in reviewing the requirements of a recreation center construction contract held that it contained a requirement for the painting of a galvanized steel roof; further, it was found that the appellant had not submitted evidence to support its allegation that it is a practice in the trade not to paint galvanized steel.

Appeal of William F. Klingensmith, Inc., IBCA-669-9-67 (Apr. 26, 1968)

Where as a result of investigation of a complaint filed with the Department of Labor the contracting officer found that one of the appellant's employees had been underpaid and where the appellant contested such finding but failed to offer any evidence in support of the allegations made, the Board sustains the findings of the contracting officer as modified by a Government stipulation respecting the labor rate to be applied for services rendered as a tractor operator.

Appeal of Arvid E. Keith, IBCA-657-7-67 (Apr. 30, 1968)

Contractor's photographs showing break in aluminum transmission conductor taken at scene in presence of Government inspectors immediately after a conductor broke and dropped to the ground substantially support contractor's claim that break was due to latent defect in conductor. Requirement by the Government for replacement of the broken conductor by the contractor constituted a constructive change and entitled contractor to an equitable adjustment consisting of his actual necessary costs in performing the extra work.

Appeal of R. C. Hughes Electric Co., Inc. and Donovan Construction Co., A Joint Venture, IBCA-662-9-67 (Sept. 11, 1968)

Termination for Convenience

Under a Standard Form construction contract containing no Suspension of Work clause, a contractor is not entitled to administrative relief for losses resulting from labor difficulties on the theory that such relief can be granted under a Termination for Convenience of the Government clause, since there was no termination

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Convenience --Continued

in fact or diminution of the work required by the contract.

Appeal of Bateson-Cheves Construction Company, IBCA-670-9-67 (Aug. 12, 1968)

Termination for Default

Where the Government, after opening of bids, did not accept the contractor's bid as offered on Standard Form 33, but issued a purchase order to the contractor that was not agreed to or acted upon by the contractor, no contract resulted. When at a later date after inspection of the contractor's work under a previous contract, the Government transmitted an order that was accepted by the contractor, the required period allowed for performance began to run as of the date of acceptance by the contractor, and the termination for default based on the date of the unaccepted order was erroneous.

Appeal of Precise Products, IBCA-673-10-67 (Feb. 9, 1968)

In a case submitted on the record involving a termination for default of a contract for planting trees on the basis of failure to make satisfactory progress, the Board finds that the Government has failed to establish a lack of progress to the extent necessary to justify a termination for default, noting, inter alia, an unexplained delay of 48 days in issuing the notice to proceed that could have materially contributed to the contractor's difficulties in performing the contract.

Appeal of Robert Hart, IBCA-659-8-67 (Apr. 10, 1968)

The Board reduced the Government's assessment of excess costs against a construction contracting firm whose contract had been terminated for default, where it was found that the completion contract had been awarded under a deficient reprocurement plan formulated by the Government, under which the completing contractor was able to submit a bid that resulted in a final total contract return to the completing

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

contractor which was substantially more than would have been received by the apparent second low bidder if the project had been finished by the latter under the completion contract.

Appeal of Gardner Construction Company, IBCA-615-1-67 (Apr. 17, 1968)

FORMATION AND VALIDITY

Bid and Award

Where the Government, after opening of bids, did not accept the contractor's bid as offered on Standard Form 33, but issued a purchase order to the contractor that was not agreed to or acted upon by the contractor, no contract resulted. When at a later date after inspection of the contractor's work under a previous contract, the Government transmitted an order that was accepted by the contractor, the required period allowed for performance began to run as of the date of acceptance by the contractor, and the termination for default based on the date of the unaccepted order was erroneous.

Appeal of Precise Products, IBCA-673-10-67 (Feb. 9, 1968)

Where the provisions of an invitation for bids clearly and explicitly require the bidder to furnish a material similar to a brand-name product, or a substitute material determined by the contracting officer to be equal thereto, the contractor, having remained silent during the bidding period without protest and having made no inquiry of the contracting officer as to the availability of such brand-name material, or of a material substantially equal to it, is not entitled after award to assert that the specification requirements are invalid for requiring the contractor to procure the material from a sole source (the contractor's post-award allegation being that it was unable to find a different source for a similar material).

Appeal of MSI Corporation, IBCA-554-4-68 (Apr. 16, 1968) 75 I. D. 89

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Bid and Award--Continued

A mere statement by a departmental officer at an opening of bids for competitive leases that an unnamed bid is unacceptable because it is unsigned does not of itself constitute a rejection of that bid, binding on the United States.

An opening of bids for competitive leases is simply a public opening and reading of bids which have been submitted. Bids are not ordinarily subject to final acceptance or rejection at that time.

The cashing of a check, which has been submitted in conjunction with a bid for a competitive lease, and the placing of the funds in a suspense account do not in any way constitute an acceptance of the bid.

An unsigned bid for a competitive lease may be accepted when it is accompanied by documentary evidence of the intent to submit the bid.

Union Oil Company Bid on Tract No. 228, Brazos Area, Texas Offshore Sale, M-36733 (June 17, 1968) 75 I.D. 147

Where an invitation to submit competitive oil and gas lease bids reserves the right to reject any and all bids even though a bid may be for more than the minimum cash bonus specified, the high bid for a particular tract may properly be rejected for the reason that it is too low without a showing that the bid is inadequate, unreasonable or lacking in good faith, even though it is above the minimum called for by the bid invitation.

Sun Oil Company et al., OCS-G 1711 etc. (July 23, 1968)

Implied and Constructive Contracts

Under a contract for construction of a road, the Board finds that rejection by the contracting officer's representative of the subbase, following a visual inspection, after it was ready for application of the base course, and his direction to reprocess the subbase, were based upon an erroneous interpretation of the specifications and constituted a constructive change entitling the contractor to an equitable

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Implied and Constructive Contracts --Continued

adjustment; but such adjustment may not include the contractor's cost of utilizing a commercial testing laboratory to establish that the Government's rejection was unjustified, since such a charge is an expense for preparing and prosecuting a claim and is unauthorized.

Appeal of James Hamilton Construction Company and Hamilton's Equipment Rentals, Inc., IBCA-493-5-65 (July 18, 1968) 75 I.D. 207

Leases

The principles of equity and fair play do not require that every potential source of error, no matter how remote, be explored by the seller before acceptance of a bid which is fair on its face. They merely require the seller to conduct himself reasonably and to refrain from taking advantage of a bid which contains a palpable error.

Midwest Oil Corporation, IA-615 (Supp.) (Apr. 1, 1968)

Mistakes

A successful bidder for a competitive oil and gas lease of tribal mineral land who refused to complete the lease form and requests a refund of the bonus and rentals deposited, alleging that in preparing his bid he relied upon a U.S. Geological Survey map which erroneously portrayed the geology of the area in which the leasehold was located, must forfeit his deposit as liquidated damages for the use and benefit of the Indian lessor when he did not apprise the United States of the error before his bid was accepted and there was no showing that the Government actually knew or should have known that the bid resulted from a mistake.

The principles of equity and fair play do not require that every potential source of error, no matter how remote, be explored by the seller before acceptance of a bid which is fair on its face. They merely require the seller to conduct himself reasonably and to refrain from taking advantage of a bid which contains a palpable error.

Midwest Oil Corporation, IA-615 (Supp.) (Apr. 1, 1968)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT

Generally

Where the Government, after opening of bids, did not accept the contractor's bid as offered on Standard Form 33, but issued a purchase order to the contractor that was not agreed to or acted upon by the contractor, no contract resulted. When at a later date after inspection of the contractor's work under a previous contract, the Government transmitted an order that was accepted by the contractor, the required period allowed for performance began to run as of the date of acceptance by the contractor, and the termination for default based on the date of the unaccepted order was erroneous.

Appeal of Precise Products, IBCA-673-10-67 (Feb. 9, 1968)

Acceleration

Under a contract to clear a reservoir of trees, brush and debris in mountainous country at elevations (1) below 7,388 feet and (2) between 7,388 and 7,519.4 feet, by February 8, 1966, which provided that storage in the reservoir would begin "about November 1, 1965," and which required operations to be conducted so that clearing was completed in advance of water being impounded by a dam, a contractor, who encountered abnormally high water from sources other than the dam but who proceeded by increasing the size of his crew and substituting maunal labor for mechanical operations in order to comply with such provision, and who completed all work on November 19, 1965, was not entitled to additional compensation on the ground that his performance was accelerated, where (i) he did not request the Government to extend his time to perform or delay closing the dam; (ii) there is no proof of any Government conduct equivalent to an order to accelerate; (iii) he could have continued to perform some clearing both below and above 7,388 feet through February 8, 1966; and (iv) the contractor planned from the outset to complete all work by November.

Appeals of Humphrey Contracting Corporation, IBCA-555-4-66, IBCA-579-7-66 (Jan. 24, 1968) 75 I. D. 22

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Breach

Where a negotiated contract for engineering services contained a liquidated damages provision that incorporated a schedule of accounts (per day) to be paid by the contractor if five designated parts of the contract were not completed within time periods fixed therein, the Board disapproved the Government's attempt to construe another general contract clause (relating to the contractor's responsibility for damages incurred because the contractor did not meet the requirements of the contract) as allowing the assessment of actual damages that allegedly were caused by inadequate or inacurrate surveying work which was (i) detected and corrected prior to completion of the project; (ii) accepted by the Government as its responsibility under an agreement which deleted work from the contract and established a substantial completion date, or (iii) a contributing cause of the contractor's failure to deliver one item on time, for which an assessment of liquidated damages was made (the contractor met its obligations under the other four parts of the liquidated damages provision). The Board based the disapproval upon its conclusion that, in the circumstances, the Government was improperly attempting to recover both actual and liquidated damages.

Appeal of Desert Sun Engineering Corporation, IBCA-725-8-68 (Dec. 31, 1968) 75 I. D. 424

Compensable Delays

Where delay by the Government in furnishing drawings under a contract for the construction and completion of earthwork, pipelines and structures required a contractor to reschedule its operations, an appeal seeking reimbursement for the expense resulting from such delay will be dismissed without a hearing as being outside the Board's jurisdiction in the absence of a Suspension of Work clause or a similar provision, the Changes clause being inapplicable to such a claim.

Appeal of Allison and Haney, Inc., IBCA-642-5-67 (Feb. 7, 1968)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Compensable Delays--Continued

A claim for additional compensation based on a delay by the Government in furnishing an outage (a period when a transmission line is deenergized) will be dismissed as outside the jurisdiction of the Board where the contract contains no "pay-for-delay" type clause.

Appeal of James Knox, dba JaK Enterprises, IBCA-684-11-67 (Feb. 13, 1968)

Where in its request for reconsideration the appellant asserts that the Board's finding that no change, actual or constructive, had occurred, as a result of delay in deliveries of Government-furnished steel, is unsupported by any substantial evidence, but fails to show that the indicia of change test had been incorrectly applied, the decision denying the appeal is affirmed.

Appeal of Mark W. Chisum Corporation, IBCA-540-1-66 (Feb. 20, 1968)

Excusable Delays

Under a contract for supplying four gate hoists for a dam, and providing as to each hoist for assessment of liquidated damages for each day of delay, where the contractor and its first-tier subcontractor were tardy in ordering steel from a second-tier supplier, such delays in purchasing will be taken into account and deducted from extensions of time for performance that are otherwise allowable because of delays in delivery of steel due to the fault of the second-tier supplier (pursuant to the decision in Schweigert, Inc. v. United States, Ct. Cl. No. 26-66, December 15, 1967).

Appeal of Galland-Henning Manufacturing Company, IBCA-534-12-65 (Mar. 29, 1968) 75 I. D. 72

Where a contractor under a contract calling for the construction in 90 days of an underground electrical distribution system, promptly submitted its proposed equipment list to the Government for advance approval and conditioned its orders upon such approval, as required by the contract, and the Government, having

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Excusable Delays--Continued

knowledge that delivery in compliance with the contract performance period was uncertain (because the contractor's supplier would not commence production until all details were approved) delayed in acting on such list and instead issued a change order changing the switches on transformers to be installed, without changing the contract completion date, the burden of the uncertainty of delivery was shifted to the Government and the contractor was entitled to an equitable adjustment extending the time of performance which reflected the full consequences of the change, including an allowance for the ensuing delay in delivery of the equipment, no showing having been made that the equipment could have been obtained more expeditiously elsewhere.

Appeal of Schurr & Finlay, Inc., IBCA-644-5-67 (Aug. 27, 1968) 75 I. D. 248

Where an appeal record contains no evidence to support a contractor's allegation that a time extension should be granted because unusually low water levels were encountered on a dredging project, the appeal will be denied.

Appeal of Morauer & Hartzell, Inc., IBCA-627-2-67 (Sept. 26, 1968)

Where there are fact questions common to the contractor's claims of excusable delay and practical impossibility on the one hand and the Government's claim of common law damages for late delivery on the other, the Board concludes that it will retain jurisdiction over the latter claim pending the development of a complete administrative record without prejudice, however, to the Government's right to file a motion to dismiss the claim for common law damages at the time its post-hearing brief is submitted.

Appeal of McGraw Edison Company, IBCA-699-2-68 (Oct. 28, 1968) 75 I. D. 350

Where an appeal record contains no evidence to support a contractor's allegation that a time extension should be granted because of interference by another Government contractor, the appeal will be denied. With respect to a second request the Board found that while a contractor is entitled to sufficient time to complete a major part of the contract work which was delayed by the Government, when the performance

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Excusable Delays--Continued

time as extended made adequate provision for the delayed work to have been completed prior to the time liquidated damages were assessed, there is no justification for further extensions of time.

Appeal of Young Associates, Inc., IBCA-557-4-66 (Dec. 4, 1968)

Impossibility of Performance

In a case where a contractor's claim for constructive change based upon practical impossibility had not been presented to the contracting officer prior to the filing of the notice of appeal, the Board denies a Government motion to dismiss such claim on the ground that in the circumstances presented a stay of proceedings pending the issuance of a finding and the taking of a timely appeal therefrom would facilitate the orderly presentation and consideration of the claims involved in the appeal. The Board also denies a Government motion to dismiss portions of the appeal on the ground of lack of specificity in the notice of appeal where it finds sufficient information in the record to apprise the Government of the essential allegations of the appellant's case and thereby permit the Government to adequately prepare its case for hearing.

Appeal of McGraw Edison Company, IBCA-699-2-68 (Oct. 28, 1968) 75 I. D. 350

Suspension of Work

A claim based upon an allegation that a Government project supervisor required the work force of a construction contractor to stand aside and give first priority to the activities of another Government contractor in a project area containing limited working space was denied because it was made for a claim period during which the appellant gave no notice that a constructive suspension of work had been caused by the acts of a Government representative--as to one portion of the claim period the appellant provided no notification of any kind as to alleged acts of the Government

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Suspension of Work--Continued

causing delays, hindrances, interferences or suspension, and as to the remainder it had requested time extensions only. Because a supplemental agreement provided for the acceleration of work during the claim period, it was of particular importance that the contracting officer be given notice, in order to afford him an opportunity to investigate whether a reasonable program of coordination of the activities of the two contractors had been worked out, and to attempt to remedy any unfair scheduling.

Notification of a monetary claim that is given under a provision such as the Changes clause, Changed Conditions clause, or an Extra Work clause may in some circumstances be treated as a proper notice under the standard construction contract Suspension of Work clause (which clause bars claims for costs incurred more than 20 days prior to the contracting officer's receipt of notice of a constructive suspension of work); however, an appellant's notification of a claim for an extension of time based upon delays resulting from the operations of another contractor (or the Government's grant of such extension) will not constitute a notice under the Suspension of Work clause.

Appeal of Hoel-Steffen Construction Company, IBCA-656-7-67 (Mar. 18, 1968) 75 I. D. 41

Under a Standard Form construction contract containing no Suspension of Work clause, a contractor is not entitle to administrative relief for losses resulting from labor difficulties on the theory that such relief can be granted under a Termination for Convenience of the Government clause, since there was no termination in fact or diminution of the work required by the contract.

Appeal of Bateson-Cheves Construction Company, IBCA-670-9-67 (Aug. 12, 1968)

Where a road construction contractor advised the Government in late May that additional material should be incorporated in a road that was under construction, and asked in writing for instructions, and by the following July 6th the condition of the road had deteriorated to the point that the responsible Government officials realized that such action should be taken at Government expense, a further delay beyond July 7 in the issuance of a written Government instruction for the change was unreasonable; therefore, the Board authorized an equitable adjustment under the Standard Suspension of Work Clause for a one-week period in which operations were delayed because the written order had not been furnished to the appellant.

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Suspension of Work--Continued

A partial suspension order given in early November to a road construction contractor was found to be unreasonable and precipitant. After being encouraged by Government officials to install base course materials on several roads in the fall, the contractor rented many pieces of equipment and hired a large work force. The suspension, ordered after the material had been placed on only one of the roads and at a time when the appellant was fully committed to the heavy expenditures associated with base course operations at the isolated project site, was not justified under the guidelines established in a contract provision authorizing temporary suspension without change in the contract price; therefore, an adjustment under the Standard Suspension of Work Clause was called for.

Appeals of Gill Construction Company and Lindo Engineering Company, IBCA-588-9-66, IBCA-626-2-67 (Aug. 30, 1968)

CONVEYANCES

GENERALLY

Where a deed from the United States describes the land as being in a particular section and township, and there are, at the time of the conveyance, two tracts of land which have been designated by official surveys of the United States as constituting that section and township, but it is clear from the nature and the language of the deed that the description refers to the earlier survey, the deed will be interpreted by reference to that survey, even though the description of land in a conveyance from the United States is ordinarily governed by the latest official survey.

United States v. Sidney M. and Esther M. Heyser, A-30810 (Jan. 24, 1968) 75 I. D. 14

CONVEYANCES--Continued

RESERVATIONS AND EXCEPTIONS

An acquired lands oil and gas lease offer filed July 1, 1966, is properly rejected as being prematurely filed, where oil and gas rights in the acquired lands were reserved in the grantor "for a primary period ending July 1, 1966," as that provision is interpreted as reserving those rights in the grantor until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

Ethel C. Radzewicz et al., A-30866 (Jan. 29, 1968)

DELEGATION OF AUTHORITY

GENERALLY

The authority of the Alaska Power Administration to engage in general investigations and planning and resource studies pursuant to Secretarial Order No. 2900 derives from several separate but overlapping statutory authorizations, including section 5 of the Flood Control Act of 1944 (16 U.S.C. sec. 825s), the Act of August 9, 1955 (69 Stat. 618), and statutory authorities of the Department respecting investigations relating to projects for the development and utilization of water, power and related resources in Alaska, such as the Public Land Administration Act of 1961 (43 U.S.C. sec. 1362). The appropriations limitation in the 1955 Act does not apply to study and planning activities justified under other laws.

Alaska Power Administration Planning and Study Authority, M-36727 (Mar. 27, 1968)

DESERT LAND ENTRY

GENERALLY

A desert land entry which is within the service area boundaries of the Coachella Valley County Water District but which has been declared ineligible to receive water from the Colorado River because of its soil classification is to be

DESERT LAND ENTRY--Continued

GENERALLY--Continued

treated the same as those lying outside the service area boundaries for the purposes of the notice of the Secretary of the Interior, dated December 2, 1965, relating to desert land entries suspended pursuant to the Maggie L. Havens decision.

Heirs of Arthur A. Allen, A-30902 (Mar. 21, 1968)

CANCELLATION

The raising of a crop without irrigation, or with nominal irrigation, during a year of abnormal rainfall is not evidence of reclamation of the land, and where an entryman fails to show that he did introduce, or could have introduced, water upon the land in quantity and manner sufficient to irrigate the land properly for crop production in a year of normal precipitation, when a crop could not be produced without irrigation, the requirements of the law have not been satisfied, and the entry is properly canceled.

United States v. Elsie Marie Knowlton and Horace J. Knowlton, A-30912 (May 21, 1968)

CLASSIFICATION

Although a desert land applicant has been granted a permit by the State Engineer of New Mexico to appropriate underground water in a declared basin which has a declining water level, this fact does not preclude the Secretary of Interior from refusing to classify the land for desert land entry because of the diminishing water reserves.

Edna Almeta Walker, A-30907 (July 25, 1968)

DESERT LAND ENTRY--Continued

CULTIVATION AND RECLAMATION

Satisfactory final proof of the reclamation, irrigation and cultivation of land in a desert land entry must show that the entryman has made a bona fide effort to produce a remunerative agricultural crop. The adequacy and the good faith of his effort must be measured by the relationship which the acts performed by the entryman bear to the reasonable hope or expectation of producing a profitable crop.

The actual production of a profitable agricultural crop is not required in order to make satisfactory final proof of the reclamation, irrigation and cultivation of a desert land entry, but, if the entryman does not produce a profitable crop, it is incumbent upon him to show that his failure to do so was attributable to factors other than deficiencies in his acts of reclaiming, cultivating and irrigating the land.

The raising of a crop without irrigation, or with nominal irrigation, during a year of abnormal rainfall is not evidence of reclamation of the land, and where an entryman fails to show that he did introduce, or could have introduced, water upon the land in quantity and manner sufficient to irrigate the land properly for crop production in a year of normal precipitation, when a crop could not be produced without irrigation, the requirements of the law have not been satisfied, and the entry is properly canceled.

United States v. Elsie Marie Knowlton and Horace J. Knowlton, A-30912 (May 21, 1968)

EXTENSION OF TIME

A request for an extension of time in which to submit final proof on a desert land entry is properly denied when a substantial period of life remains to the entry.

Heirs of Arthur A. Allen, A-30902 (Mar. 21, 1968)

DESERT LAND ENTRY--Continued

EXTENSION OF TIME--Continued

Satisfactory final proof of the reclamation, irrigation and cultivation of land in a desert land entry must show that the entryman has made a bona fide effort to produce a remunerative agricultural crop. The adequacy and the good faith of his effort must be measured by the relationship which the acts performed by the entryman bear to the reasonable hope or expectation of producing a profitable crop.

United States v. Elsie Marie Knowlton and Horace J. Knowlton, A-30912 (May 21, 1968)

FINAL PROOF

Discretionary grants of extensions of time under the desert land laws will not be made by the Secretary of the Interior where to do so would result in the agricultural reclamation of desert land in California with water from the Colorado River since it is contrary to the public interest to increase the pressure of the inadequate water supply in that river presently available for use in California.

Heirs of Cora Wood Duncan, A-30893 (Mar. 27, 1968)

SUSPENSIONS

A desert land entry which is within the service area boundaries of the Coachella Valley County Water District but which has been declared ineligible to receive water from the Colorado River because of its soil classification is to be treated the same as those lying outside the service area boundaries for the purposes of the notice of the Secretary of the Interior, dated December 2, 1965, relating to desert land entries suspended pursuant to the Maggie L. Havens decision.

Heirs of Arthur A. Allen, A-30902 (Mar. 21, 1968)

ENLARGED HOMESTEADS

LANDS SUBJECT TO

Land in a stock-driveway withdrawal is not subject to petition-application under the enlarged homestead law; a petition-application for such land is properly rejected and will gain the applicant no rights or preference even if the withdrawal is later revoked.

Reed F. Adams, A-30950 (Oct. 16, 1968)

EQUITABLE ADJUDICATION

SUBSTANTIAL COMPLIANCE

Cases subject to equitable adjudication are limited by statute to those entries where there has been substantial compliance with the law; a request to refer a mining case to the "Board of Equitable Adjudication" cannot be granted where, pursuant to a contest, a claim is declared invalid for lack of discovery, since where there is no discovery there is no compliance with the mining law.

United States v. Ida McClarty Johnson, Administratrix, A-30853 (Mar. 7, 1968)

EXPENDITURES
(See also Appropriations, and Funds)

SPECIAL FUNDS

Loans from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964), may be made only to organized Indian tribes which have received charters of incorporation pursuant to section 17 of that act, or to tribes, bands, and groups made eligible by the act of May 7, 1948, 62 Stat. 211, 25 U.S.C. sec. 482 (1964).

EXPENDITURES--Continued

SPECIAL FUNDS--Continued

Loans from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964) may not be made for the purpose of financing an activity intended to influence the passage of congressional legislation.

The Alaska Federation of Natives is not an "Indian chartered corporation" and is not eligible for a loan from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 10, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964), nor is it a "tribe, band or group otherwise eligible for such a loan under authority of the act of May 7, 1948, 62 Stat. 211, 25 U.S.C. sec. 482 (1964). Even if otherwise eligible, such a loan could not be made for the purpose of enabling it to attempt to secure the passage of congressional legislation.

Eligibility of Alaska Federation of Natives for Loan from Revolving Fund for Loans, M-36772 (July 8, 1968)

FEDERAL EMPLOYEES AND OFFICERS

AUTHORITY TO BIND GOVERNMENT

A lease of Government property issued without statutory authority by an employee of the Bureau of Indian Affairs is invalid.

Status of Use Permit--Bureau of Indian Affairs to Paul D. Merrill, Ft. Wingate Trading Post, New Mexico, M-36743 (Mar. 19, 1968)

A mere statement by a departmental officer at an opening of bids for competititve leases that an unnamed bid is unacceptable because it is unsigned does not of itself constitute a rejection of that bid, binding on the United States.

Union Oil Company Bid on Tract No. 228, Brazos Area, Texas Offshore Sale, M-36733 (June 17, 1968) 75 I.D. 147

FEDERAL EMPLOYEES AND OFFICERS --Continued

AUTHORITY TO BIND GOVERNMENT --Continued

The United States cannot be deprived of its right to receive all of the royalty payments due under the terms of an oil and gas lease and the applicable statutory provisions by the unauthorized acts of its employees, and the failure of the Geological Survey to collect all the royalty due by tacit acceptance of the lessee's determination of its royalty obligation for 13 years does not waive the right of the United States to receive full royalty payment in accordance with the lease terms or estop it from demanding payment of the balance due under those terms.

Sinclair Oil and Gas Company, A-30709 (June 20, 1968) 75 I.D. 155

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT

(See also Surplus Property)

Withdrawn public domain lands do not become "surplus" within the meaning of the Federal Property and Administrative Services Act, 40 U.S.C. sec. 471 et seq., until after a determination by the Secretary of the Interior and concurred in by the Administrator of General Services, that the lands are not suitable for return to the public domain.

Proposed Sale of Withdrawn Land by the Corps of Engineers, M-36749 (Aug. 21, 1968) 75 I.D. 245

FEES

(See also Accounts)

A filing fee for an appeal deposited in the after hours mail box at the land office after business hours on the last day for filing an appeal and paying the filing fee will be deemed to have been timely filed.

A check timely given in payment of a filing fee for an appeal which is refused payment when first presented to the bank on which it is drawn but which is later paid without having been returned

FEES--Continued

to the land office will be deemed to have been timely filed.

Bernard E. Darling v. Charles Lewellen, A-30885 (June 13, 1968)

FUNDS

(See also Accounts, Appropriations, and Expenditures)

GENERALLY

The Act of September 22, 1961, 75 Stat. 584, 25 U.S.C. secs. 164-5 (1964) requires that monies representing per capita shares or other individualizations, which have been unpaid for a period of six years, be restored to Indian tribal accounts even if such individualizations are represented by government checks which may be outstanding. Such restoration would cut off the claims of the payees of such checks but not the rights of holders in due course who are protected by the Act of August 21, 1957, 31 U.S.C. sec. 132 (1964).

Restoration to Indian Tribes of Funds Held for Unclaimed Per Capita Payments Where Payment Checks are Outstanding, M-36741 (Jan. 8, 1968)

Funds held in the United States Treasury in trust for an Indian tribe or individual may be invested by the Secretary or his delegate in public debt obligations of the United States and in bonds, notes, or other obligations unconditionally guaranteed as to both principal and interest by the United States, 25 U.S.C. sec. 162a (1964).

"Public debt obligations" includes only bonds issued by the United States Treasury; "bonds, notes, or other obligations which are unconditionally guaranteed as to both principal and interest by the United States" includes obligations fully or unconditionally guaranteed or insured by a Government agency pursuant to a congressional grant of authority for a constitutional purpose.

The Secretary or his delegate may invest Indian trust funds in any obligations not unconditionally guaranteed by the United States if, by statute, such an obligation is made the lawful subject of investment for all trust funds under the authority or control of the United States.

Investment of Indian Tribal Trust Funds, M-36732 (May 3, 1968)

GOVERNMENT PROPERTY

GENERALLY

Under the act of June 20, 1950 (64 Stat. 248), transferring land now occupied by the Fort Wingate Trading Post in New Mexico from the War Department to the Department of the Interior for use of the Bureau of Indian Affairs, the land did not become Indian land but remained Government land subject to legislation controlling the Department of the Interior.

Status of Use Permit--Bureau of Indian Affairs to Paul D. Merrill, Ft. Wingate Trading Post, New Mexico, M-36743 (Mar. 19, 1968)

GRAZING PERMITS AND LICENSES

GENERALLY

If continued grazing within a monument under a revocable grazing permit would result in damage or destruction of the values to be protected and preserved by establishment of the monument, it is an abuse of discretion and therefore illegal to allow such activity to continue.

Legality of Grazing Permits in Organ Pipe Cactus National Monument, M-36734 (Apr. 5, 1968)

A petition asking that a district manager be directed to establish immediately allotments and areas of use proposed in an earlier proceeding is properly denied where circumstances have changed in the interval and further study is necessary before proper allotments can be established.

Duckwater Stockmen's Association, A-30939 (Nov. 27, 1968)

The requirement that a base property must have been offered in an application for grazing privileges prior to June 28, 1938, to be qualified as dependent by use is considered satisfied where the Bureau has long recognized an application as establishing such rights and there is evidence tending to show that the application was timely filed; a challenge against the application which attempts to fill gaps in the record facts by applying presumptions of illegality and impropriety will be rejected, as any

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

presumptions to be made in such circumstances should be made in favor of continued recognition and of propriety and legality.

A third party should not be able to challenge a determination that a property long recognized by the Bureau as qualified by its dependency by use was not so qualified because of technicalities which the applicant was not apprised of at the time the application was filed and which he no longer has an opportunity to correct.

Porter Estate Company, A-30817 (Dec. 2, 1968)

ADJUDICATION

The applicability of regulation 43 CFR 4115.2-1 (e)(13)(i) precluding the right of a licensee or other user of the range to demand a readjudication of grazing privileges after they have been held for a period of three years is not limited to situations where an adjudication of the unit has been made as set out in 43 CFR 4110.0-5 (r), but is also applicable where adjudications of licenses in the unit have been made over a long period of time on the basis of information available and not challenged by other licensees.

Although other licensees may have lost their right to have their or anyone else's license readjudicated, the Bureau of Land Management retains discretionary authority to make adjustments in a license at anytime when necessary to comply with the Federal Range Code for Grazing Districts, and the Bureau properly exercises that authority to cut licenses in a unit by 50% where such a reduction has been ordered by the Department for all users in the unit and only some of the users have suffered the reduction.

Malvin Pedroli et al., A-30861 (Mar. 19, 1968)
75 I.D. 63

Where a grazing unit is formally established and class 1 grazing qualifications within the unit are recognized in parties A and B and A requests that the grazing qualifications of B be reduced on the ground that there should be an apportionment of the dependency by use between base properties now owned by each of them that were controlled and used by one operator

GRAZING PERMITS AND LICENSES--Continued

ADJUDICATION--Continued

during the priority period, the request is properly refused where although the method of computing B's qualifications may have been improper A has not shown that the qualification attributed to B's property is erroneous, it has been recognized for a long period of time, and it is consistent with what would have been a proper method of computation.

Where a grazing unit is formally established by the Bureau of Land Management with parties A and B as the licensed grazing operators within the unit, the facts that A has stockwater rights in the area and has been a party to range line agreements establishing the area as its area of grazing use, agreements to which B has not been a party since its acquisition of the base property, are not sufficient reasons to show an abuse of discretion by the Bureau in licensing B in the unit.

Porter Estate Company, A-30817 (Dec. 2, 1968)

APPEALS

An applicant for a grazing license or permit who, after proper notification, fails to protest or appeal a decision of a district manager within the period prescribed in the decision is barred thereafter from challenging the matters adjudicated in such decision, and an appeal to a hearing examiner from a district manager's partial rejection of an application for grazing privileges is properly dismissed where the appeal is, in fact, an appeal from an earlier adjudication which is no longer subject to appeal.

The applicability of regulation 43 CFR 4115.2-1 (e)(13)(i) precluding the right of a licensee or other user of the range to demand a readjudication of grazing privileges after they have been held for a period of three years is not limited to situations where an adjudication of the unit has been made as set out in 43 CFR 4110.0-5 (r), but is also applicable where adjudications of licenses in the unit have been made over a long period of time on the basis of information available and not challenged by other licensees.

Although other licensees may have lost their right to have their or anyone else's license readjudicated, the Bureau of Land Management retains discretionary authority to make adjustments in a license at anytime when necessary to comply with the Federal Range Code for Grazing Districts, and the Bureau properly

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

exercises that authority to cut licenses in a unit by 50% where such a reduction has been ordered by the Department for all users in the unit and only some of the users have suffered the reduction.

Malvin Pedroli et al., A-30861 (Mar. 19, 1968)
75 I. D. 63

An appeal to the Director, Bureau of Land Management, is properly dismissed where the notice of intention to appeal the hearing examiner's decision was not filed within 10 days after service of the decision on the appellant and the appeal to the Director was not filed within 30 days after such service.

Royal B. Woolley, A-30936 (Mar. 20, 1968)

An appeal to the Director, Bureau of Land Management, from a hearing examiner's decision is properly dismissed where the appellants file a notice of intention to appeal more than 10 days after receipt of the examiner's decision and file their appeal more than 30 days after receipt of the decision; it is immaterial that the examiner omitted to send them a copy of a statement setting forth the requirements for an appeal.

Bert N. and Paul Smith, A-30943 (Apr. 18, 1968)

A party who challenges the Bureau of Land Management's determination of grazing qualifications of others or of itself where temporary licenses had previously been issued has the burden of proof at a hearing to be held on an appeal from the determination to show that the Bureau's determination was erroneous.

Porter Estate Company, A-30817 (Dec. 2, 1968)

APPORTIONMENT OF FEDERAL RANGE

A petition asking that a district manager be directed to establish immediately allotments and areas of use proposed in an earlier proceeding is properly denied where circumstances have changed in the interval and further study is necessary before proper allotments can be established.

Duckwater Stockmen's Association, A-30939 (Nov. 27, 1968)

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE --Continued

Where a grazing unit is formally established and class 1 grazing qualifications within the unit are recognized in parties A and B and A requests that the grazing qualifications of B be reduced on the ground that there should be an apportionment of the dependency by use between base properties now owned by each of them that were controlled and used by one operator during the priority period, the request is properly refused where although the method of computing B's qualifications may have been improper A has not shown that the qualification attributed to B's property is erroneous, it has been recognized for a long period of time, and it is consistent with what would have been a proper method of computation.

Where a grazing unit is formally established by the Bureau of Land Management with parties A and B as the licensed grazing operators within the unit, the facts that A has stockwater rights in the area and has been a party to range line agreements establishing the area as its area of grazing use, agreements to which B has not been a party since its acquisition of the base property, are not sufficient reasons to show an abuse of discretion by the Bureau in licensing B in the unit.

Porter Estate Company, A-30817 (Dec. 2, 1968)

BASE PROPERTY (LAND)

Commensurability

Where a livestock operation during the priority period was based upon several properties, it is improper in determining the qualifications of one of the base properties to ignore the other properties and to assume that the operations were based completely on the one property in question; the commensurability of all the base properties should be compared with the dependency by use on the Federal range and the resulting qualifications should be properly apportioned among the base properties.

Porter Estate Company, A-30817 (Dec. 2, 1968)

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND)--Continued

Dependency by Use

The requirement that a base property must have been offered in an application for grazing privileges prior to June 28, 1938, to be qualified as dependent by use is considered satisfied where the Bureau has long recognized an application as establishing such rights and there is evidence tending to show that the application was timely filed; a challenge against the application which attempts to fill gaps in the record facts by applying presumptions of illegality and impropriety will be rejected, as any presumptions to be made in such circumstances should be made in favor of continued recognition and of propriety and legality.

A third party should not be able to challenge a determination that a property long recognized by the Bureau as qualified by its dependency by use was not so qualified because of technicalities which the applicant was not apprised of at the time the application was filed and which he no longer has an opportunity to correct.

Where a livestock operation during the priority period was based upon several properties, it is improper in determining the qualifications of one of the base properties to ignore the other properties and to assume that the operations were based completely on the one property in question; the commensurability of all the base properties should be compared with the dependency by use on the Federal range and the resulting qualifications should be properly apportioned among the base properties.

Where a grazing unit is formally established and class 1 grazing qualifications within the unit are recognized in parties A and B and A requests that the grazing qualifications of B be reduced on the ground that there should be an apportionment of the dependency by use between base properties now owned by each of them that were controlled and used by one operator during the priority period, the request is properly refused where although the method of computing B's qualifications may have been improper A has not shown that the qualification attributed to B's property is erroneous, it has been recognized for a long period of time, and it is consistent with what would have been a proper method of computation.

Where the class 1 grazing qualifications of a party have been determined by the Bureau upon the basis of the dependency by use of the base property during the priority years, a reduction in the qualifications solely for the reason that the lesser figure was all that was originally applied for prior to June 28, 1938, is not supportable upon the basis of any regulation and is properly reversed.

Porter Estate Company, A-30817 (Dec. 2, 1968)

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND)--Continued

Ownership or Control

Under the Federal Range Code, the transfer of base property qualifications from one property to another must be made with the consent of owners or encumbrancers of the land, unless the proposed transferee is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established. For the purpose of this regulation the holder of a life interest in the base property desiring to make a transfer will be considered as the owner of the base property and will not be required to obtain the consent of holders of future interests to the property, such as remaindermen, in the absence of a court order or judgment specifically affecting his rights to the transfer.

Where persons claiming to own base lands as remaindermen protest the transfer of base property qualifications from such land to other land owned by the life tenant of the base lands on the ground that their consent is required as owners of the base lands and that the life tenant has a legal obligation to them not to deplete their estate by the transfer of the grazing privileges, their protest will not be sustained in the absence of a court order or judgment specifically precluding such a transfer by the life tenant.

Elizabeth Barndt Crouse et al., A-30542 (Mar. 7, 1968)

Transfers

Under the Federal Range Code, the transfer of base property qualifications from one property to another must be made with the consent of owners or encumbrancers of the land, unless the proposed transferee is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established. For the purpose of this regulation the holder of a life interest in the base property desiring to make a transfer will be considered as the owner of the base property and will not be required to obtain the consent of holders of future interests to the property, such as remaindermen, in the absence of a court order or judgment specifically affecting his rights to the transfer.

Where persons claiming to own base lands as remaindermen protest the transfer of base property qualifications from such land to other land owned by the life tenant of the base lands on the ground that their consent is required as

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND)--Continued

Transfers--Continued

owners of the base lands and that the life tenant has a legal obligation to them not to deplete their estate by the transfer of the grazing privileges, their protest will not be sustained in the absence of a court order or judgment specifically precluding such a transfer by the life tenant.

Elizabeth Barndt Crouse et al., A-30542 (Mar. 7, 1968)

CANCELLATION AND REDUCTIONS

A grazing licensee is properly held to be in willful trespass when he permits his livestock to remain on the Federal range during a period of time when he has no license for such use and did not apply for one, but a reduction in his future grazing privileges, in addition to assessment of monetary damages, for the offense will be set aside when the record shows no history of prior trespasses or flagrancy in the trespass.

Eldon L. Smith, A-30944 (Oct. 15, 1968)

Where the class 1 grazing qualifications of a party have been determined by the Bureau upon the basis of the dependency by use of the base property during the priority years, a reduction in the qualifications solely for the reason that the lesser figure was all that was originally applied for prior to June 28, 1938, is not supportable upon the basis of any regulation and is properly reversed.

Porter Estate Company, A-30817 (Dec. 2, 1968)

HEARINGS

A party who challenges the Bureau of Land Management's determination of grazing qualifications of others or of itself where temporary licenses had previously been issued has the burden of proof at a hearing to be held on an appeal from the determination to show that the Bureau's determination was erroneous.

Porter Estate Company, A-30817 (Dec. 2, 1968)

GRAZING PERMITS AND LICENSES--Continued

TRESPASS

A grazing licensee is properly held to be in willful trespass when he permits his livestock to remain on the Federal range during a period of time when he has no license for such use and did not apply for one, but a reduction in his future grazing privileges, in addition to assessment of monetary damages, for the offense will be set aside when the record shows no history of prior trespasses or flagrancy in the trespass.

Eldon L. Smith, A-30944 (Oct. 15, 1968)

HOMESTEADS (ORDINARY)

(See also Enlarged Homesteads, Soldiers' Additional Homesteads, and Stock-Raising Homesteads)

GENERALLY

The fact that desert-type homestead entries may have been patented without a showing of irrigation of the entries does not warrant the patenting of another entry in the same area where irrigation is necessary in a year of normal precipitation to raise a successful crop, the entryman did not irrigate any of the crops planted on his entry, and every crop dried out for lack of moisture.

United States v. Alvin M. May, A-30675 (July 25, 1968)

COMMUTATION

A homestead final proof submitted at the end of the fifth entry year, whether considered as regular or commutation proof, must be rejected and the entry canceled when it shows on the face that the entryman has done no cultivation at all in the fourth and fifth entry years.

Pekka Merikallio, A-30892 (Mar. 5, 1968)

HOMESTEADS (ORDINARY)--Continued

CONTESTS

A charge alleging that an entry was made by the entryman for purposes of speculation and in collusion with others for the benefit of others and that the entryman had entered into an agreement to convey all or a portion of the land contained in the entry states adequate grounds to support a contest and is not a mere statement of a conclusion of law.

A charge in a contest complaint which alleges that the land in the entry was alienated "for purposes not authorized as public purposes" states a conclusion of law and is not a sufficient charge under departmental regulations governing private contests.

A charge that an entryman has not cultivated 1/16 of the land in his entry made while 8 months of the second entry year remain is premature and will not sustain a contest.

Reference in a note in the case file to conversations between an entryman and a land office employee concerning the possibility that an entryman has conveyed all or part of his entry and to letters of the contestant or others referring to the contestant that an entry was made through fraud and collusion are not reasons shown by the records of the Bureau of Land Management sufficient to bar a contest charge that the entryman has agreed to convey all or part of the land in his entry.

Allegations made by a contestant in an appeal arising after the filing of his complaint which purport to give reasons for canceling an entry may not be considered as part of the contest complaint.

Bernard E. Darling v. Charles Lewellen, A-30885 (June 13, 1968)

A private contest against a "homestead" for which the application to enter and notice of settlement have been rejected because the lands described were covered by a prior State selection when the application for homestead entry was filed and settlement made is properly dismissed on the grounds that the entryman had no claim or interest subject to attack by contest and that a contest does not lie for matters shown by the records of the Bureau of Land Management.

Dale Johnson, A-30806 (Sept. 17, 1968)

HOMESTEADS (ORDINARY)--Continued

CULTIVATION

A request for a reduction in the cultivation requirements of the homestead laws will be denied where there are additional areas in the entry which can be cultivated and where the alleged difficulties of access to such areas were ascertainable at the time of entry.

Donald M. Fell, A-30862 (Feb. 21, 1968)

A homestead final proof submitted at the end of the fifth entry year, whether considered as regular or commutation proof, must be rejected and the entry canceled when it shows on the face that the entryman has done no cultivation at all in the fourth and fifth entry years.

Pekka Merikallio, A-30892 (Mar. 5, 1968)

Where a homestead entryman asserts circumstances which, if established, would justify the reduction of cultivation required to be performed during the fourth entry year, he will be permitted to submit evidence to justify a reduction even though he failed to submit timely notice of his misfortunes following their occurrence.

Earl R. Barnard, A-30920 (May 27, 1968)

In a contest of a homestead entry by the Government on the grounds that the entryman did not comply with the cultivation requirements of the homestead law in that he failed to irrigate in an area where the rainfall is inadequate for successful crop production, the entry is properly canceled where the undisputed evidence shows that in each of the 4 entry years in which cultivation was required the rainfall was normal and each crop planted dried out after a good start because of lack of rainfall and lack of any irrigation by the entryman.

The fact that desert-type homestead entries may have been patented without a showing of irrigation of the entries does not warrant the patenting of another entry in the same area where irrigation is necessary in a year of normal precipitation to raise a successful crop, the entryman did not irrigate any of the crops planted on his entry, and every crop dried out for lack of moisture.

United States v. Alvin M. May, A-30675 (July 25, 1968)

HOMESTEADS (ORDINARY)--Continued

FINAL PROOF

A homestead final proof submitted at the end of the fifth entry year, whether considered as regular or commutation proof, must be rejected and the entry canceled when it shows on the face that the entryman has done no cultivation at all in the fourth and fifth entry years.

Pekka Merikallio, A-30892 (Mar. 5, 1968)

LANDS SUBJECT TO

It is proper to reject a homestead application for lands which have been classified for disposal only under the act of June 14, 1926, as ameded (43 U.S.C. 869), and the classification order precludes their appropriation under any other public land law.

William Edwin Connery, ES-3595 (July 24, 1968)

An application for a homestead entry in Alaska is properly rejected where it is filed after a selection by the State under its Statehood Act, although the selection application was originally filed while the selected lands were withdrawn but was subsequently reasserted by amendments to the application after revocation of the withdrawal, and where alleged acts of settlement were also subsequent to an amendment of the State's selection application which had the effect of segregating the land from appropriation by application or settlement and location.

Charles H. Sells, Patricia J. Davenport, A-30613 (Sept. 10, 1968) 75 I. D. 297

An application for a homestead entry and a notice of settlement and location created no claim or interest in land which had been withdrawn from appropriation by a valid State selection at the time the application was filed or settlement made.

Dale Johnson, A-30806 (Sept. 17, 1968)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

LANDS SUBJECT TO

An Indian allotment application is properly rejected where the land sought is acquired land within a national forest since only public lands are available for Indian allotments.

Albert A. Conner, A-30929 (Oct. 8, 1968)

INDIAN ECONOMIC ENTERPRISES

FEDERAL BUSINESS CORPORATIONS

Loans from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964), may be made only to organized Indian tribes which have received charters of incorporation pursuant to section 17 of that act, or to tribes, bands, and groups made eligible by the act of May 7, 1948, 62 Stat. 211, 25 U.S.C. sec. 482 (1964).

Loans from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964) may not be made for the purpose of financing an activity intended to influence the passage of congressional legislation.

The Alaska Federation of Natives is not an "Indian chartered corporation" and is not eligible for a loan from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 10, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964), nor is it a "tribe, band or group otherwise eligible for such a loan under authority of the act of May 7, 1948, 62 Stat. 211, 25 U.S.C. sec. 482 (1964). Even if otherwise eligible, such a loan could not be made for the purpose of enabling it to attempt to secure the passage of congressional legislation.

Eligibility of Alaska Federation of Natives for Loan from Revolving Fund for Loans, M-36772 (July 8, 1968)

INDIAN LANDS

GENERALLY

Under the act of June 20, 1950 (64 Stat. 248), transferring land now occupied by the Fort Wingate Trading Post in New Mexico from the War Department to the Department of the Interior for use of the Bureau of Indian Affairs, the land did not become Indian land but remained Government land subject to legislation controlling the Department of the Interior.

Status of Use Permit--Bureau of Indian Affairs to Paul D. Merrill, Ft. Wingate Trading Post, New Mexico, M-36743 (Mar. 19, 1968)

INDIAN LANDS--Continued

GENERALLY--Continued

As land reserved for the use of the Pala, Pauma, and Warner's Ranch Indians is under the administrative control of the Bureau of Indian Affairs, rights-of-way over such land are governed by regulations of the Bureau of Indian Affairs, not those of the Bureau of Land Management, and income from land so reserved is not subject to disposition as if the land were public land.

Jurisdiction of Lands Withdrawn for the Benefit of Certain Groups of Mission Indians, California--Patent of Land Under the Act of March 1, 1907, M-36756 (Oct. 8, 1968)

ALLOTMENTS

Alienation

Where an option agreement for the purchase of an Indian allotment provides for payment of the full purchase price upon consummation of the sale, the approval of the agreement is within the discretion of the Secretary of the Interior.

Proposed Sale of Mission Creek Allotted and Tribal Trust Lands, M-36742 (Jan. 19, 1968)

The equitable principle that approval of a deed of Indian land relates back to make the conveyance effective as of the date of execution, does not prevent the Secretary or his delegate from considering circumstances which occurred subsequent to execution in determining whether the deed should be approved.

Appeal of Tena Bearskin First Sound, IA-1668 (June 11, 1968)

DESCENT AND DISTRIBUTION

Generally

A successor Hearing Examiner is precluded from writing a decision where evidence was taken and received by his predecessor when the credibility evaluation of one or more witnesses who appeared only before the first Examiner

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Generally--Continued

is involved but the right to a hearing de novo may be waived.

Estate of John J. Akers, IA-D-18 (Feb. 26, 1968)

A determination by an Examiner of Inheritance that the appellant was not the natural father of the decedent will be affirmed where supported by substantial evidence.

There is a strong presumption that a child born in wedlock is legitimate and the party who alleges illegitimacy must overcome the presumption.

Estate of Forrester Miller, IA-P-7 (Feb. 27, 1968)

A showing that two Orders Determining Heirs have issued in connection with the death of an Indian, and that they are contradictory, establishes good cause for reopening.

Estate of Gi We Bi Nes I Kwe, IA-D-19 (Mar. 1, 1968)

Where the Examiner of Inheritance entered an order approving decedent's will which described the trust property subject to probate and subsequently the Area Director withdrew his prior approval of certain conveyances to decedent during his lifetime the Examiner's order should be remanded for correction.

Estate of Charles Wain, Jr., IA-P-8 (Mar. 14, 1968)

In order for an appellant to raise a ground on appeal he first must have alleged that ground in his petition for rehearing. If a ground is raised for the first time on appeal without the examiner having been afforded the opportunity to pass upon the ground when considering appellant's petition for rehearing, appellant's appeal insofar as it relates to that ground will be dismissed.

An appeal, based upon a ground which was alleged at the hearing but no evidence was presented by the appellant to support the allegation will be dismissed.

Estate of Josephine Six Feathers, IA-D-21 (Apr. 11, 1968)

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Generally--Continued

The Secretary of the Interior is not bound or controlled by State law as to questions regarding the deceased's marital status or the legitimacy of his children.

A person claiming to be the spouse of a decedent has the burden of proof to establish the validity of the marriage claimed through clear and convincing evidence.

Section 5 of the act of February 28, 1891 (26 Stat. 795; 25 U.S.C. sec. 371) makes an otherwise illegitimate child legitimate for purpose of inheriting Indian trust lands from the child's deceased Indian father or mother.

Where there is evidence to support the findings of the Examiner, the Examiner's decision will not be disturbed on appeal.

The Examiner's denial of a petition for rehearing based upon newly discovered evidence is proper where the newly discovered evidence is merely cumulative and of the same nature as the evidence previously considered by the Examiner.

Estate of Dan P. Mullings a/k/a Dan Mullins, IA-S-1 (Apr. 12, 1968)

When property is discovered as not having been included in an inventory and such property comes from the same source as that included in the original inventory it must be considered as omitted property.

Estate of Pretty Paint, IA-D-23 (Aug. 2, 1968)

A decision made on a question of law on a prior appeal becomes the law of the case, or res judicata, where on the second appeal the same party raises the same issue that was raised and decided on the prior appeal.

A party who appears at a rehearing without counsel and raises questions of law that have become res judicata has not been deprived of a fair hearing.

Estate of John J. Akers, IA-D-18 (Supp.) (Sept. 23, 1968)

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Generally--Continued

Where testimony was taken by several different examiners over a period of approximately fifty (50) years and where questions of both fact and law are involved, the rule that an Examiner's conclusions on controverted questions of fact will not be disturbed on appeal is not applicable.

There is a presumption that a decedent left heirs or next of kin capable of inheriting.

Escheats are not favored by the law.

Estate of Jackson Searle, IA-S-2 (Dec. 9, 1968)

The filing of a notice of appeal one day after the expiration of an extended period results in a forfeiture of right of review.

A general specification of points for review in a notice of appeal is insufficient and will not be considered upon appeal.

Estate of Alvis Bobidosh, a/k/a Alvis L. Bobidosh, IA-D-26 (Dec. 18, 1968)

Claims Against Estates

The time limitation imposed on claims of creditors of the general public by 25 CFR 15.23(a) and (e) is inapplicable to the filing of claims on behalf of agencies of the United States.

Estate of John J. Akers, IA-D-18 (Feb. 26, 1968)

A claim against the estate of a deceased Indian filed after the conclusion of the hearing must be disallowed where the claimant fails to allege or otherwise indicate to the Examiner that satisfactory proof can be furnished that the claimant did not have actual notice of the hearing and that the claimant was not on the reservation or in the vicinity during the period when public notice thereof was posted.

A claim against the estate of a deceased Indian, filed by a bank subsequent to a hearing conducted pursuant to a notice thereof which had, for twenty days before the date of hearing, been posted in the U.S. Post Office of the city in which the bank is located and doing business,

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Claims Against Estates--Continued

should be disallowed pursuant to 25 CFR 15.23 (e) as not being timely filed.

Estate of Marion Ahdosy, IA-T-17 (Aug. 22, 1968)

In the consideration of a claim filed by the Internal Revenue Service against an estate of a deceased person for delinquent taxes, a judgment entered by the Tax Court, though entered by agreement of the parties, is as res judicata as if judgment had been entered after contest.

Interest accrues on a tax deficiency found by a Tax Court from the due date of the tax until paid.

Estate of John J. Akers, IA-D-18 (Supp.) (Sept. 23, 1968)

Intestate Succession

The doctrine of ancestral property, which is embodied in the laws of descent and distribution of the States of North Dakota, N.D.C.C. sec. 56-01-12, and South Dakota, 1939 S.D.C. sec. 56.0113, excludes a paternal half sister from sharing in the estate of her deceased paternal half brother which contained only restricted or trust property inherited from the decedent's mother to whom the half sister was not related by blood, even though decedent's mother adopted the half sister.

Adoption, under the adoption statutes of North Dakota, 3 N.D.C.C. sec. 14-11-13, and South Dakota, S.D.C. 1960 Supp. sec. 14.0407, of a paternal half sister by the mother of the half sister's deceased paternal half brother does not entitle the half sister to inherit restricted or trust property, subject to the operation of the doctrine of ancestral property, from the deceased paternal half brother.

Adoption, under the adoption statute of Montana, sec. 61-212 Repl. Vol. 4 (Part 1), Revised Codes of Montana, 1947, of a paternal half sister by the mother of the half sister's deceased paternal half brother entitles the paternal half sister to share in the restricted or trust estate of the deceased paternal half brother, which estate otherwise would be subject to the doctrine of ancestral property embodied in sec. 91-411 Revised Codes of Montana, 1947, which would exclude the paternal half sister from sharing in the estate which the paternal half

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Intestate Succession--Continued

brother inherited from his mother to whom the paternal half sister was not related by blood.

Estate of Leroy Curtis Deon-Iron Whiteman, IA-D-22 (May 20, 1968)

When the uncorroborated testimony of an Indian witness not represented by counsel is that she is the daughter of the decedent, and a review of the record discloses that no persuasive evidence was adduced to the contrary, it is the duty of the Hearing Examiner to inquire into the question of paternity with considerable particularity and assist in the discovery of any records or other documentary evidence bearing upon that question.

Where a review of the evidence adduced at a hearing raises grave doubts as to whether the hearing was fully utilized to bring forth all of the facts necessary to the determination of the decedent's heirs, the case will be remanded for further hearing.

Estate of Joseph Mjoetah Masquat, IA-T-16 (Nov. 15, 1968)

Where an Examiner of Inheritance has had the opportunity to observe the witnesses and evaluate their testimony directly, his conclusion upon controverted questions of fact will not be disturbed on appeal.

Estate of George Squawlie (Squally), IA-P-12 (Dec. 27, 1968)

Presumption of Death

An Examiner's order determining heirs of a person presumed to be dead, but who in fact is not, is void.

Estate of Mabel Grace DeMarsche, IA-D-25 (Sept. 5, 1968)

Wills

Before a witness to a will may be disqualified because of interest the interest must be certain and not merely possible. The father-in-law of a beneficiary under a will is a competent witness if otherwise qualified.

Physical infirmity, age, and pain and suffering are not in themselves sufficient to support a finding

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Wills--Continued

of lack of testamentary capacity. No presumption of incapacity arises from unequal distribution of property among next of kin.

Undue influence, being a species of fraud, must be proved precisely or inferentially by irrestible inference. Mere opportunity to exercise undue influence is insufficient to establish it. Mere general influence is not undue influence.

There is no inference of fraud because of the fact that the will of an aged, illiterate Indian is prepared in the Office of the Indian Agency where the detailed information concerning allotment and census numbers is maintained.

Estate of Ida (Idaho) Horsehead, IA-P-6 (Jan. 12, 1968)

In his function of approving or disapproving an Indian will the Secretary of the Interior is not bound by a State law which prohibits one spouse from devising away a specified portion of his estate from the other spouse.

Under the doctrine of dependent relative revocation the older will of a testator will remain in force where the inference can be fairly drawn that the testator's act of revocation of the older will in connection with his making a new will was meant to depend on his new will being a valid one.

In spite of a testator's excessive use of alcohol if at the time he executes a will he enjoys such a lucid interval as to have sufficient mind and memory to know the nature and extent of his property, the proper objects of his bounty, and has the capacity to do the thing at hand and comprehend its significance, he possesses testamentary capacity.

To invalidate a will on undue influence contestant must show such influence to have been exerted to the extent of destroying the free will of the testator or that the will of another was substituted for that of the testator, and this amounts to more than the opportunity or possibility that undue influence was brought to bear on the testator.

Estate of John J. Akers, IA-D-18 (Feb. 26, 1968)

To permit an Indian employee of the Bureau of Indian Affairs to take a devise of restricted lands under a will of a deceased Indian, to whom the employee is not related, for having rendered "pleasant and courteous service"

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Wills--Continued

would be against the public policy of the United States.

Estate of Elgear George Davis, IA-D-20 (Mar. 5, 1968)

To invalidate a will for undue influence it must be shown that the free will of the testator was destroyed or that the will of another was substituted for that of the testator. Something more than the opportunity for or possibility or suspicion of undue influence is required to be shown in order to void a will for undue influence.

Estate of Josephine Six Feathers, IA-D-21 (Apr. 11, 1968)

A will wherein the testator disinherits his heirs and blood relatives is not unnatural per se. The preference of strangers to the blood by a testator is merely evidence to be considered in the determination of his testamentary capacity, and whether such preference is natural depends on the relationship between the testator and his heirs and devisees.

Evidence of the reason motivating a testator to make a will is material only insofar as it bears upon his testamentary capacity or is indicative of fraud or undue influence having been exercised upon him.

Estate of Edward Leon Petsemoie, IA-T-10 (Apr. 29, 1968)

A presumptive heir who did not receive the notice of hearing required by 25 CFR sec. 15.4 in sufficient time to attend the hearing is entitled to a supplemental hearing where the record indicates that the notice was not mailed to her last known place of residence.

Estate of Joe (Joseph) Sherwood, IA-P-10 (May 9, 1968)

A will executed by a testator while laboring under an insane delusion which materially affects such will is invalid. An insane delusion which materially affects a will is a false belief on the part of the testator which would be incredible to the testator himself if he were of sound mind and from which belief he cannot be dissuaded by any evidence or argument.

Estate of Richard Rusk, IA-T-15 (May 14, 1968)

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Wills--Continued

Although a deceased Osage Indian may own unrestricted property which devolves pursuant to a will which was disapproved by the Secretary of the Interior, such fact does not, as to the restricted property in the estate, validate a revocation clause contained in the disapproved will nor cause that clause to become effective.

Estate of Joseph Petsemoie, IA-T-12 (May 20, 1968)

The Secretary has the inherent power, notwithstanding the absence of specific regulations, to reopen and review administrative determinations purporting to be final when some new factor such as fraud or newly discovered evidence is brought to his attention.

Authority of the Secretary of the Interior to make final administrative disposition of appeals involving the approval or disapproval of wills of deceased Indians has been delegated to Regional Solicitors by 210 DM 2.2A(3), 24 F. R. 1348, and Solicitor's Regulation 23, 31 F. R. 4631.

Estate of Edward Leon Petsemoie, IA-T-10 (Supp.) (May 29, 1968)

Although an Indian will fulfills the technical requirements for a valid dispository instrument, it must, to become valid, be approved by the Secretary of the Interior. The authority of the Secretary to approve or disapprove an Indian will is discretionary, going beyond the factum of the will, and exercise of such authority requires consideration of all circumstances attending execution, including the motives which may have induced the testator to devise his entire estate to non-Indians to whom he is related neither by blood nor by marriage, and the effect which the exercise of such discretion bears upon the heirs at law and the beneficiaries named in the dispository instrument.

Where a chronic alcoholic is shown by the evidence to have been willing to devise his property to anyone who would provide him with the means of satisfying his craving for alcoholic beverages, a will giving his entire estate to non-Indian friends who operated a beer tavern lacks a basis in logic, common sense and reason, and is an unnatural will.

Estate of George Green, IA-T-11 (June 7, 1968)

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Wills--Continued

Applicable probate regulations (25 CFR 15.0-15.34) do not require that a statement of the testator's reason for disinheriting a surviving child be included in a will devising trust property, notwithstanding the fact that such a statement is contemplated by certain "Instructions to Field Officers" appearing on a printed will form issued by the Bureau of Indian Affairs stating that "If a husband, wife, child or grandchild who is an heir is given nothing, the reason must be set out."

Regulations which provide that an adult Indian with testamentary capacity may dispose of trust property "by a will executed in writing and attested by two disinterested adult witnesses" (25 CFR 15.28) should not be interpreted as invalidating the execution by thumb mark of a person who cannot write his name. Greater protection against the perpetration of fraud is afforded by a practice of causing such a person to use his thumb as a stylus to subscribe in ink his identifiable thumbprint than by a practice of causing the person to use a pen to subscribe a mark which normally would be quite difficult to verify after death.

Factual determinations made by the Hearing Examiner, who had an opportunity to observe and hear the witnesses, with regard to conflicting and unclear testimony concerning the competence of the testator to make a will, ordinarily will not be disturbed on appeal. Evidence that the testator was elderly, did not speak English and only spoke the Shawnee language, that his hearing and eyesight were impaired, and that he was unable to manage his own business affairs does not preclude a finding that he possessed testamentary capacity at the time of execution of the will.

Estate of Anna Charley Kaseca White, IA-T-13 (June 18, 1968)

Where an Examiner of Inheritance finds undue influence in the procuring of execution of a will, and such finding is supported by credible evidence, it will not be reversed on appeal.

Estate of John Baptiste Falcon, Jr., IA-P-11 (July 26, 1968)

Where property has passed through two estates, the last one having been probated in 1949, public interest dictates that the decisions reached not be disturbed.

Estate of Pretty Paint, IA-D-23 (Aug. 2, 1968)

INDIAN LANDS--Continued

DESCENT AND DISTRIBUTION--Continued

Wills--Continued

The taking of testimony from one attesting witness only without the record showing the reason for the non-appearance of the other attesting witness constitutes insufficient proof of the validity of an Indian will.

Where a daughter alleges that the lands devised by her mother to other persons were obtained by the mother from the daughter by duress, and no evidence was taken on the allegation, the interests of justice require a remand of the case for the taking of further evidence.

Estate of Grace Tolbert, 1A-D-24 (Sept. 5, 1968)

The Secretary of the Interior has by express terms reserved to himself the power to waive and make exceptions to his regulations affecting Indian matters and, further, has the inherent power, notwithstanding the absence of specific regulations so providing, to reopen and review administrative determinations purporting to be final.

Estate of Ellen Fitzpatrick, IA-T-5 (Supp.) (Nov. 5, 1968)

To invalidate the will of a deceased Indian evidence of undue influence must constitute more than the mere opinion and feeling of persons who were not present when the will was executed.

The decision of the Examiner of Inheritance approving the will of a deceased Indian which distributes his estate to persons not related to him by blood is not arbitrary and capricious if the will is not unjust, inequitable, or unnatural.

The source of the estate of a decedent and the actions taken by him during his lifetime in connection with his property, as well as the relationship between the decedent, his heirs and devisees, may be considered in determining whether a will is just, equitable and natural.

Estate of Conrad Mausape, IA-T-14 (Dec. 13, 1968)

LEASES AND PERMITS

Oil and Gas

The term "royalty" as used in 25 CFR 172.16 and standard oil and gas leases of Indian lands encompasses so-called compensatory royalties, that is, payments made to compensate the lessor

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Oil and Gas--Continued

for loss of royalty resulting from drainage of the leasehold by wells on adjoining land, as well as production.

Rentals paid by lessee of Indian allotted land pursuant to 25 CFR 172.16 and the provisions of his oil and gas lease are creditable against the compensatory royalty assessed for the rental period.

Pan American Petroleum Corp., IA-1578 (Feb. 29, 1968)

A successful bidder for a competitive oil and gas lease of tribal mineral land who refused to complete the lease form and requests a refund of the bonus and rentals deposited, alleging that in preparing his bid he relied upon a U.S. Geological Survey map which erroneously portrayed the geology of the area in which the leasehold was located, must forfeit his deposit as liquidated damages for the use and benefit of the Indian lessor when he did not apprise the United States of the error before his bid was accepted and there was no showing that the Government actually knew or should have known that the bid resulted from a mistake.

It is incumbent upon a bidder for oil and gas leases on Indian lands to investigate and inform himself about the lands. He may assess their mineral potential on the basis of whatever information he chooses to consider.

Midwest Oil Corporation, IA-615 (Supp.) (Apr. 1, 1968)

MINING LEASES (TRIBAL LANDS)

Under the Act of May 11, 1938 (52 Stat. 347, 25 U.S.C. sec. 396a et seq.) the Bureau of Indian Affairs has authority to approve tribal leases of coal reserved for the benefit of Indians belonging to and having tribal rights on the Fort Berthold Indian Reservation. The Act of May 11, 1938, supra, and the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. sec. 461 et seq.) superseded the provisions of the Act of August 3, 1914 (38 Stat. 681) which placed jurisdiction over leasing of the Fort Berthold coal lands in the General Land office.

Jurisdiction of Coal Reserved for Benefit of Indians Belonging to and Having Tribal Rights on the Fort Berthold Indian Reservation, M-36745 (Apr. 19, 1968)

INDIAN LANDS--Continued

OIL AND GAS LEASING (TRIBAL LANDS)

A successful bidder for a competitive oil and gas lease of tribal mineral land who refused to complete the lease form and requests a refund of the bonus and rentals deposited, alleging that in preparing his bid he relied upon a U.S. Geological Survey map which erroneously portrayed the geology of the area in which the leasehold was located, must forfeit his deposit as liquidated damages for the use and benefit of the Indian lessor when he did not apprise the United States of the error before his bid was accepted and there was no showing that the Government actually knew or should have known that the bid resulted from a mistake.

It is incumbent upon a bidder for oil and gas leases on Indian lands to investigate and inform himself about the lands. He may assess their mineral potential on the basis of whatever information he chooses to consider.

Midwest Oil Corporation, IA-615 (Supp.) (Apr. 1, 1968)

RIGHTS-OF-WAY

The United States acquired for the St. Mary's canal right-of-way across Blackfeet Reservation, Montana, only the interest in the land necessary to assure its use for canal purposes, but continues to hold any other interest in the land for the Blackfeet Tribe or individual allottees, or their successors, whose lands are crossed by the right-of-way.

Interest Acquired by the United States in Canal Right-of-Way over Tribal Lands, Blackfeet Reservation, Montana, and Allotted Blackfeet Lands for the Milk River Reclamation Project, M-36728 (Apr. 8, 1968)

TRIBAL LANDS

The Act of August 19, 1958, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390, requires the preparation of a plan for distributing the assets of California rancherias or for selling such assets and distributing the proceeds, but neither the amended act nor its legislative history specify or restrict the manner of sale.

INDIAN LANDS--Continued

TRIBAL LANDS--Continued

The sale of tribal lands of a California rancheria under the Act of August 19, 1958, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390, may be made by option agreement, so long as the transaction does not delay the termination of the trust responsibilities and services to the Indians of the rancheria involved.

Proposed Sale of Mission Creek Allotted and Tribal Trust Lands, M-36742 (Jan. 19, 1968)

Former lakebed lands left dry by the gradual recession of water belong to the owner of the adjoining upland and where such relicted land was formed by the gradual recession of Walker Lake along upland which is part of the Walker River Indian Reservation, the relicted lakebed belongs to the Paiute Indians of the Walker River Reservation by operation of law.

Lands in T. 11 N., R. 30 E., M. D. M., and T. 12 N., R. 28 E., M. D. M., Nevada, except for mineral interests, may, in the discretion of the Secretary, be added to the Walker River Indian Reservation under the Act of June 22, 1936 (49 Stat. 1806), to the extent that the total acreage added to the reservation under that act is within the maximum authorized by statute.

Relicted Lakebed Lands Adjoining Walker River Indian Reservation, Nevada, M-36736 (Apr. 9, 1968)

INDIAN REORGANIZATION ACT

Loans from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964), may be made only to organized Indian tribes which have received charters of incorporation pursuant to section 17 of that act, or to tribes, bands, and groups made eligible by the act of May 7, 1948, 62 Stat. 211, 25 U.S.C. sec. 482 (1964).

Loans from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964) may not be made for the purpose of financing an activity intended to influence the passage of congressional legislation.

INDIAN REORGANIZATION ACT--Continued

The Alaska Federation of Natives is not an "Indian chartered corporation" and is not eligible for a loan from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 10, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964), nor is it a "tribe, band or group otherwise eligible for such a loan under authority of the act of May 7, 1948, 62 Stat. 211, 25 U.S.C. sec. 482 (1964). Even if otherwise eligible, such a loan could not be made for the purpose of enabling it to attempt to secure the passage of congressional legislation.

Eligibility of Alaska Federation of Natives for Loan from Revolving Fund for Loans, M-36772 (July 8, 1968)

INDIAN TRIBES

GENERALLY

Where a State applies for land under the provisions of the Swamp Land Act, and after hearing the examiner holds that certain lands are subject to grant under the act, and where, after the decision of the hearing examiner is appealed by the Regional Solicitor on behalf of the State Director, Bureau of Land Management, an Indian Tribe files a petition to intervene in the the proceeding, the petition will be granted where the Tribe demonstrates that it has an interest in the outcome of the proceeding.

In the Matter of Land Classification State of California, Applicant, A-31022 (Aug. 14, 1968)

ALASKAN GROUPS

A native village in Alaska can contract for a claims attorney by action of a general meeting of the village (or its governing body, if it is specifically authorized to enter into attorney contracts for the village), but only after approval of the Secretary of the Interior or his authorized representative.

A native village in Alaska recognized as having relations with the Federal Government has the

INDIAN TRIBES--Continued

ALASKAN GROUPS--Continued

exclusive privilege of prosecuting a village claims against the United States under the Indian Claims Commission Act (25 U.S.C. sec. 70i), and individual members of the village cannot make a representative claims attorney contract to prosecute the village's claims.

Ahtna Tanah Ninnah Association (Copper River Indian Land Association) in Alaska is not a recognized tribe or band of Indians and has no authority to execute an attorney contract subject to R.S. sec. 2103, as amended, 25 U.S.C. sec. 81 (1964).

The Arctic Slope Native Association in Alaska is not a recognized tribe or band of Indians and has no authority to execute an attorney contract subject to R.S. sec. 2103, as amended, 25 U.S.C. sec. 81 (1964).

Approval of Claims Attorney Contracts of Arctic Slope Native Association and Ahtna Tanah Ninnah Association (Copper River Indian Land Association), M-36744 (Apr. 8, 1968)

The Alaska Federation of Natives is not an "Indian chartered corporation" and is not eligible for a loan from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 10, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964), nor is it a "tribe, band or group" otherwise eligible for such a loan under aut ority of the act of May 7, 1948, 62 Stat. 211, 25 U.S.C. sec. 482 (1964). Even if otherwise eligible, such a loan could not be made for the purpose of enabling it to attempt to secure the passage of congressional legislation.

Eligibility of Alaska Federation of Natives for Loan from Revolving Fund for Loans, M-36772 (July 8, 1968)

ATTORNEYS

A native village in Alaska can contract for a claims attorney by action of a general meeting of the village (or its governing body, if it is specifically authorized to enter into attorney contracts for the village), but only after approval of the Secretary of the Interior or his authorized representative.

A native village in Alaska recognized as having relations with the Federal Government has the

INDIAN TRIBES--Continued

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exclusive privilege of prosecuting a village claims against the United States under the Indian Claims Commission Act (25 U.S.C. sec. 70i), and individual members of the village cannot make a representative claims attorney contract to prosecute the village's claims.

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Approval of Claims Attorney Contracts of Arctic Slope Native Association and Ahtna Tanah Ninnah Association (Copper River Indian Land Association), M-36744 (Apr. 8, 1968)

CONTRACTS

A native village in Alaska can contract for a claims attorney by action of a general meeting of the village (or its governing body, if it is specifically authorized to enter into attorney contracts for the village), but only after approval of the Secretary of the Interior or his authorized representative.

A native village in Alaska recognized as having relations with the Federal Government has the exclusive privilege of prosecuting a village claims against the United States under the Indian Claims Commission Act (25 U.S.C. sec. 70i), and individual members of the village cannot make a representative claims attorney contract to prosecute the village's claims.

Ahtna Tanah Ninnah Association (Copper River Indian Land Association) in Alaska is not a recognized tribe or band of Indians and has no authority to execute an attorney contract subject to R.S. sec. 2103, as amended, 25 U.S.C. sec. 81 (1964).

INDIAN TRIBES--Continued

CONTRACTS--Continued

The Arctic Slope Native Association in Alaska is not a recognized tribe or band of Indians and has no authority to execute an attorney contract subject to R.S. sec. 2103, as amended, 25 U.S.C. sec. 81 (1964).

Approval of Claims Attorney Contracts of Arctic Slope Native Association and Ahtna Tanah Ninnah Association (Copper River Indian Land Association), M-36744 (Apr. 8, 1968)

FISCAL AND FINANCIAL AFFAIRS

The Act of September 22, 1961, 75 Stat. 584, 25 U.S.C. secs. 164-5 (1964) requires that monies representing per capita shares or other individualizations, which have been unpaid for a period of six years, be restored to Indian tribal accounts even if such individualizations are represented by government checks which may be outstanding. Such restoration would cut off the claims of the payees of such checks but not the rights of holders in due course who are protected by the Act of August 21, 1957, 31 U.S.C. sec. 132 (1964).

Restoration to Indian Tribes of Funds Held for Unclaimed Per Capita Payments Where Payment Checks are Outstanding, M-36741 (Jan. 8, 1968)

Funds held in the United States Treasury in trust for an Indian tribe or individual may be invested by the Secretary or his delegate in public debt obligations of the United States and in bonds, notes, or other obligations unconditionally guaranteed as to both principal and interest by the United States, 25 U.S.C. sec. 162a (1964).

"Public debt obligations" includes only bonds issued by the United States Treasury; "bonds, notes, or other obligations which are unconditionally guaranteed as to both principal and interest by the United States" includes obligations fully or unconditionally guaranteed or insured by a Government agency pursuant to a congressional grant of authority for a constitutional purpose.

The Secretary or his delegate may invest Indian trust funds in any obligations not unconditionally guaranteed by the United States if, by statute, such an obligation is made the lawful subject of investment for all trust funds under the authority or control of the United States.

Investment of Indian Tribal Trust Funds, M-36732 (May 3, 1968)

INDIAN TRIBES--Continued

JUDGMENT FUNDS

Funds held in the United States Treasury in trust for an Indian tribe or individual may be invested by the Secretary or his delegate in public debt obligations of the United States and in bonds, notes, or other obligations unconditionally guaranteed as to both principal and interest by the United States, 25 U.S.C. sec. 162a (1964).

"Public debt obligations" includes only bonds issued by the United States Treasury; "bonds, notes, or other obligations which are unconditionally guaranteed as to both principal and interest by the United States" includes obligations fully or unconditionally guaranteed or insured by a Government agency pursuant to a congressional grant of authority for a constitutional purpose.

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Investment of Indian Tribal Trust Funds, M-36732 (May 3, 1968)

ORGANIZED TRIBES

The Alaska Federation of Natives is not an "Indian chartered corporation" and is not eligible for a loan from the revolving fund established pursuant to section 10 of the Indian Reorganization Act of June 10, 1934, 48 Stat. 986, as amended, 25 U.S.C. sec. 470 (1964), nor is it a "tribe, band or group" otherwise eligible for such a loan under authority of the act of May 7, 1948, 62 Stat. 211, 25 U.S.C. sec. 482 (1964). Even if otherwise eligible, such a loan could not be made for the purpose of enabling it to attempt to secure the passage of congressional legislation.

Eligibility of Alaska Federation of Natives for Loan from Revolving Fund for Loans, M-36772 (July 8, 1968)

INDIAN TRIBES--Continued

TERMINATION

The sale of tribal lands of a California rancheria under the Act of August 19, 1958, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390, may be made by option agreement, so long as the transaction does not delay the termination of the trust responsibilities and services to the Indians of the rancheria involved.

Proposed Sale of Mission Creek Allotted and Tribal Trust Lands, M-36742 (Jan. 19, 1968)

INDIAN WATER AND POWER RESOURCES

GENERALLY

Lands within the Flathead Indian Reservation reserved in 1909 under a provision authorizing the Secretary to reserve from all appropriations lands chiefly valuable for power or reservoir sites, which lands have since been used for the Flathead Indian Irrigation and Power Project, are reserved for the physical works and facilities of the irrigation and power systems of the Flathead project within the meaning of section 5(b) of the act of May 25, 1948 (62 Stat. 269), it being immaterial that the 1909 reservation withdrew lands valuable for a power or reservoir site without expressly using the term "project."

Enlargement of Kerr Substation, Flathead Irrigation Project, Montana, M-36735 (Jan. 31, 1968)

CONSTRUCTION

Federal funds appropriated by Congress for the construction, repair and improvement of Indian irrigation projects (see e.g., Interior Appropriation Act for fiscal year 1968, 81 Stat. 59, 61) may be used to construct laterals to serve lands included in such projects which are owned by non-Indians and the costs of such construction

CONSTRUCTION--Continued

treated as reimbursable costs of the projects allocable on a per acre basis to all lands included therein.

Propriety of Using Funds Appropriated for Indian Irrigation Projects to Construct Facilities to Serve Lands Therein Owned by Non-Indians, M-36752 (Aug. 23, 1968)

IRRIGATION PROJECTS

Where the operation and maintenance of a unit of the Klamath Indian Irrigation Project is to be transferred to the water users and the redesignation as to irrigability of lands for assessment purposes is contemplated, any such redesignation should include and explanation of the basis for change from the present designation.

Transfer of Modoc Point Unit, Klamath Indian Irrigation Project, Oregon, M-36737 (Apr. 26, 1968)

Under section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, P. L. 89-508, 31 U. S. C. secs. 951-953 (Supp. II, 1965-66), and implementing regulations in 4 CFR Part 104, collection action on claims by the United States for delinquent accounts due an Indian irrigation project cannot be terminated for inability to locate the debtor unless all four requirements of 4 CFR 104(b) are met, including the running of the applicable statute of limitations. The applicable statute of limitations is the Act of July 18, 1966, 80 Stat. 304, P. L. 89-505, 28 U. S. C. secs. 2415, 2416 (Supp. II, 1965-66), under which court proceedings to enforce the claims must be started by July 17, 1972, or within six years after the right of action accrues.

Under section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, P. L. 89-508, 31 U. S. C. secs. 951-953 (Supp. II, 1965-66), and implementing regulations in 4 CFR Part 104, collection action on claims by the United States for delinquent accounts due an Indian irrigation project should not be temporarily suspended for inability to locate the debtor "after diligent effort" until the sources of assistance suggested in 4 CFR 104.2 and DM 344.4.2 have been utilized.

Under section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, P. L. 89-508, 31 U. S. C. secs. 951-953 (Supp. II, 1965-66),

IRRIGATION PROJECTS--Continued

and implementing regulations in 4 CFR Part 104, collection action on claims by the United States for delinquent accounts due an Indian irrigation project can be terminated when it is determined that the cost of collection is likely to exceed the amount recoverable. This authorization is provided by 4 CFR 104.3(c) and is available whether or not the debtor can be located, but should be exercised with prudence and only after diligent efforts have been made administratively to locate and collect from the debtor.

Suspension or Termination of Collection Action on Claims for Indian Irrigation Projects Under the Act of July 19, 1966, 80 Stat. 309 (Federal Claims Collection Act of 1966), M-36746 (May 10, 1968)

Federal funds appropriated by Congress for the construction, repair and improvement of Indian irrigation projects (see e. g., Interior Appropriation Act for fiscal year 1968, 81 Stat. 59, 61) may be used to construct laterals to serve lands included in such projects which are owned by non-Indians and the costs of such construction treated as reimbursable costs of the projects allocable on a per acre basis to all lands included therein.

Propriety of Using Funds Appropriated for Indian Irrigation Projects to Construct Facilities to Serve Lands Therein Owned by Non-Indians, M-36752 (Aug. 23, 1968)

OPERATION AND MAINTENANCE

A regulation issued under the Federal Claims Collection Act of 1966 authorizes referral to the Department of Justice for litigation of claims amounting to less than $250 where a debtor is able to pay and the Government can effectively enforce payment, as it presumably can where a statutory lien against project lands is retained by the United States as security for the payment of operation and maintenance charges of Indian water and power projects.

Applicability of the Federal Claims Collection Act of 1966 (80 Stat. 308) To Delinquent Operation and Maintenance Charges, Indian Irrigation and Power Projects, M-36724 (Jan. 17, 1968)

INDIANS

CRIMINAL JURISDICTION

The Federal Indian Liquor laws, 18 U.S.C. secs. 1154 and 1156 (1964 ed.), as modified by 18 U.S.C. sec. 1161 (1964 ed.), are applicable in Alaska to the Congressional, Secretarial and Executive Order native reservations and to dependent native communities.

Liquor Control, Indian Communities, Alaska, M-36712 (Supp.) (Jan. 15, 1968)

FISCAL AND FINANCIAL AFFAIRS

The Act of September 22, 1961, 75 Stat. 584, 25 U.S.C. secs. 164-5 (1964) requires that monies representing per capita shares or other individualizations, which have been unpaid for a period of six years, be restored to Indian tribal accounts even if such individualizations are represented by government checks which may be outstanding. Such restoration would cut off the claims of the payees of such checks but not the rights of holders in due course who are protected by the Act of August 21, 1957, 31 U.S.C. sec. 132 (1964).

Restoration to Indian Tribes of Funds Held for Unclaimed Per Capita Payments Where Payment Checks are Outstanding, M-36741 (Jan. 8, 1968)

Funds held in the United States Treasury in trust for an Indian tribe or individual may be invested by the Secretary or his delegate in public debt obligations of the United States and in bonds, notes, or other obligations unconditionally guaranteed as to both principal and interest by the United States, 25 U.S.C. sec. 162a (1964).

"Public debt obligations" includes only bonds issued by the United States Treasury; "bonds, notes, or other obligations which are unconditionally guaranteed as to both principal and interest by the United States" includes obligations fully or unconditionally guaranteed or insured by a Government agency pursuant to a congressional grant of authority for a constitutional purpose.

The Secretary or his delegate may invest Indian trust funds in any obligations not unconditionally guaranteed by the United States if, by statute, such an obligation is made the lawful subject of investment for all trust funds under the authority or control of the United States.

Investment of Indian Tribal Trust Funds, M-36732 (May 3, 1968)

INDIANS--Continued

LAW AND ORDER

The Federal Indian Liquor laws, 18 U.S.C. secs. 1154 and 1156 (1964 ed.), as modified by 18 U.S.C. sec. 1161 (1964 ed.), are applicable in Alaska to the Congressional, Secretarial and Executive Order native reservations and to dependent native communities.

Liquor Control, Indian Communities, Alaska, M-36712 (Supp.) (Jan. 15, 1968)

PROBATE

A will executed by a testator while laboring under an insane delusion which materially affects such will is invalid. An insane delusion which materially affects a will is a false belief on the part of the testator which would be incredible to the testator himself if he were of sound mind and from which belief he cannot be dissuaded by any evidence or argument.

Estate of Richard Rusk, IA-T-15 (May 14, 1968)

Although an Indian will fulfills the technical requirements for a valid dispository instrument, it must, to become valid, be approved by the Secretary of the Interior. The authority of the Secretary to approve or disapprove an Indian will is discretionary, going beyond the factum of the will, and exercise of such authority requires consideration of all circumstances attending execution, including the motives which may have induced the testator to devise his entire estate to non-Indians to whom he is related neither by blood nor by marriage, and the effect which the exercise of such discretion bears upon the heirs at law and the beneficiaries named in the dispository instrument.

Where a chronic alcoholic is shown by the evidence to have been willing to devise his property to anyone who would provide him with the means of satisfying his craving for alcoholic beverages, a will giving his entire estate to non-Indian friends who operated a beer tavern lacks a basis in logic, common sense and reason, and is an unnatural will.

Estate of George Green, IA-T-11 (June 7, 1968)

INDIANS--Continued

PROBATE--Continued

Applicable probate regulation (25 CFR 15.0-15.34) do not require that a statement of the testator's reason for disinheriting a surviving child be included in a will devising trust property, notwithstanding the fact that such a statement is contemplated by certain "Instructions to Field Officers" appearing on a printed will form issued by the Bureau of Indian Affairs stating that "If a husband, wife, child or grandchild who is an heir is given nothing, the reason must be set out."

Regulations which provide that an adult Indian with testamentary capacity may dispose of trust property "by a will executed in writing and attested by two disinterested adult witnesses" (25 CFR 15.28) should not be interpreted as invalidating the execution by thumb mark of a person who cannot write his name. Greater protection against the perpetration of fraud is afforded by a practice of causing such a person to use his thumb as a stylus to subscribe in ink his identifiable thumbprint than by a practice of causing the person to use a pen to subscribe a mark which normally would be quite difficult to verify after death.

Factual determinations made by the Hearing Examiner, who had an opportunity to observe and hear the witnesses, with regard to conflicting and unclear testimony concerning the competence of the testator to make a will, ordinarily will not be disturbed on appeal. Evidence that the testator was elderly, did not speak English and only spoke the Shawnee language, that his hearing and eyesight were impaired, and that he was unable to manage his own business affairs does not preclude a finding that he possessed testamentary capacity at the time of execution of the will.

Estate of Anna Charley Kaseca White, IA-T-13 (June 18, 1968)

When the uncorroborated testimony of an Indian witness not represented by counsel is that she is the daughter of the decedent, and a review of the record discloses that no persuasive evidence was adduced to the contrary, it is the duty of the Hearing Examiner to inquire into the question of paternity with considerable particularity and assist in the discovery of any records or other documentary evidence bearing upon that question.

Where a review of the evidence adduced at a hearing raises grave doubts as to whether the hearing was fully utilized to bring forth all of the facts necessary to the determination of the decedent's heirs, the case will be remanded for further hearing.

Estate of Joseph Mjoetah Masquat, IA-T-16 (Nov. 15, 1968)

INDIANS--Continued

TRUSTS

Funds held in the United States Treasury in trust for an Indian tribe or individual may be invested by the Secretary or his delegate in public debt obligations of the United States and in bonds, notes, or other obligations unconditionally guaranteed as to both principal and interest by the United States, 25 U.S.C. sec. 162a (1964).

"Public debt obligations" includes only bonds issued by the United States Treasury; "bonds, notes, or other obligations which are unconditionally guaranteed as to both principal and interest by the United States" includes obligations fully or unconditionally guaranteed or insured by a Government agency pursuant to a congressional grant of authority for a constitutional purpose.

The Secretary or his delegate may invest Indian trust funds in any obligations not unconditionally guaranteed by the United States if, by statute, such an obligation is made the lawful subject of investment for all trust funds under the authority or control of the United States.

Investment of Indian Tribal Trust Funds, M-36732 (May 3, 1968)

MINERAL LANDS

DETERMINATION OF CHARACTER OF

To establish the mineral character of lands sought by a State, either in exchange for other lands or as indemnity for lost school lands, it must be shown that known conditions are such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

The mineral character of land may be established by inference without actual exposure of the mineral deposit for which the land is supposed to be valuable, but the inferred existence of a deposit of high-quality limestone at unkown depth does not establish the mineral character of land in the absence of evidence that extraction of the limestone is economically feasible, thereby giving the land a practical value for mining purposes.

State of California v. E. O. Rodeffer, A-30611 (June 28, 1968) 75 I. D. 176

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF --Continued

To establish the mineral character of land, now closed to mining location, embraced in a placer mining claim, it must be shown that known conditions, as of a date when the land was open to mining location, were such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

Where the validity of a portion of a contested placer mining claim located on land subsequently withdrawn from mining location is dependent upon a finding that, at the effective date of the withdrawal, the land was known to be mineral in character, but the contest complaint made no reference to the date of the determination of mineral character, and no evidence was introduced by either party to the contest bearing upon known conditions at the time of the withdrawal which related to the mineral character of the land, and where there is reason for doubting whether the allegations of the complaint accurately reflected the charges which the contestant proposed to substantiate, the proceeding will be set aside to permit the filing of a new complaint or amended complaint.

United States v. Clare Williamson, A-30640 (Oct. 23, 1968) 75 I. D. 338

MINERAL RESERVATION

Where a mineral locator seeks to carry on mining operations on a claim located within a patented stock-raising homestead entry, he need post a bond sufficient to cover only damage to crops, to improvements, and to the value of the land for grazing purposes within the limits of the mining claim and not one sufficient to cover damages caused by a disruption of the surface owners' entire grazing operation.

L. W. Hansen, Anthony & Betty Bubany, A-31029 (Dec. 30, 1968)

MINERAL LEASING ACT

APPLICABILITY

Substances of sodium enumerated in section 23 of the Mineral Leasing Act, whether simple, double or complex compounds of sodium, are subject to disposition only under the provisions of the Mineral Leasing Act.

Wolf Joint Venture et al., A-30978 (May 2, 1968) 75 I. D. 137

LANDS SUBJECT TO

Lands in national parks are not subject to leasing under the Mineral Leasing Act.

Gene R. Blaney, A-30894 (June 11, 1968)

MINES AND MINING

Federal Metal and Nonmetallic Mine Safety Act is applicable to mills, but not to smelters and refineries.

Applicability of Federal Metal and Nonmetallic Mine Safety Act (Act of September 16, 1966; 80 Stat. 772; 30 U.S.C. 721-740, Supp. III (1968)), M-36750 (Aug. 30, 1968)

MINING CLAIMS

(See also Multiple Mineral Development Act, and Surface Resources Act)

GENERALLY

Under the mining laws of the United States one may take possession of vacant public land open to location under those laws and, after filing notice of location, retain that possession

MINING CLAIMS--Continued

GENERALLY--Continued

against all except the Government while he is in diligent prosecution of his efforts to discover valuable minerals therein, but, when the Government withdraws its consent to such location, either by withdrawing the land from the operation of the mining laws or by otherwise making it unavailable for mining operations, the locator must show that he has made a discovery of a valuable mineral deposit within the limits of the claim in order to retain his possession.

United States v. Frank Coston, A-30835 (Feb. 23, 1968)

Mining claims are properly declared null and void on the basis of charges asserted in a government contest complaint where an amended answer filed by the contestee can reasonably be interpreted only as a request that a hearing on the charges be dismissed and that the claims be invalidated for a lack of discovery.

Dorothy Meyer Long, A-30821 (Feb. 28, 1968)

Cases subject to equitable adjudication are limited by statute to those entries where there has been substantial compliance with the law; a request to refer a mining case to the "Board of Equitable Adjudication" cannot be granted where, pursuant to a contest, a claim is declared invalid for lack of discovery, since where there is no discovery there is no compliance with the mining law.

United States v. Ida McClarty Johnson, Administratrix, A-30853 (Mar. 7, 1968)

There is no restriction upon the location or acquisition of mining claims by a corporation in which some or all of the shares of stock are owned by persons who are not citizens of the United States.

Alien Ownership of Shares in a Corporate Mining Locator, M-36738 (July 16, 1968)

Where a mining claimant stipulates to a withdrawal of her answers to contest complaints and an admission of the allegations charging a lack of discovery on her claims, she will not be relieved of her stipulation in order to present evidence of discovery where the claims have been located for many years and she has had ample time to make discoveries on the claims and to develop evidence of such discoveries.

United States v. Stella Wagnon Wilson et al., A-30787 (July 23, 1968)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS

The act of July 23, 1955, had the effect of excluding from the coverage of the mining laws "common varieties" of building stone, but left the act of August 4, 1892, authorizing the location of building stone placer mining claims effective as to building stone that has "some property giving it distinct and special value."

To determine whether a deposit of building stone or other substance listed in the act of July 23, 1955, is of a common or uncommon variety, there must be a comparison of the deposit with other deposits of similar type minerals in order to ascertain whether the deposit has a property giving it a distinct and special value. If the deposit is to be used for the same purposes as minerals of common occurrence, then there must be a showing that some property of the deposit gives it a special value for such use and that this value is reflected by the fact that the material commands a higher price in the market place. If, however, the stone or other mineral has some property making it useful for some purpose for which other commonly available materials cannot be used, this may adequately demonstrate that it has a distinct and special value.

A stipulation between the Government's attorney and the mining claimant's attorney at a hearing to determine whether a building stone is of a common or uncommon variety under the act of July 23, 1955, that the stone is marketable, does not preclude a further hearing to consider whether the facts relating to the marketability demonstrate that the stone has some property giving it a distinct and special value over other stones used for the same purposes which are also marketable but are considered to be of a common variety.

United States v. U.S. Minerals Development Corporation, A-30407 (Apr. 30, 1968) 75 I. D. 127

To determine whether a deposit of building stone or other substance listed in section 3 of the act of July 23, 1955, is of a common or uncommon variety, there must be a comparison of the deposit with other deposits of similar type minerals in order to ascertain whether the deposit has a property giving it a distinct and special value. If the deposit is to be used for the same purposes as other minerals of common occurrence, it must possess some property which gives it special value for such uses which value is reflected in the fact that it commands a higher price in the market place, or it must have some property which gives it value for purposes for which the other materials are not suited.

United States v. Gene DeZan et al., A-30515 (July 1, 1968)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Whether deposits of stone within a mining claim are common varieties of stone no longer locatable under the mining laws since the act of July 23, 1955, or are locatable as an uncommon variety having a "distinct and special value," may be determined by ascertaining whether the deposit has some property making it useful for some purpose for which other commonly available materials cannot be used same purposes as minerals of common occurrence by determining if it has some property which gives it a special value for such use as reflected by the fact that the material commands a significantly higher price in the market place than the other materials.

Where mining claims are located after July 23, 1955, for deposits of stone which are used for roofing granules and which may have physical or chemical characteristics superior for that purpose than other stone also used for the same purpose, the deposits cannot be considered to be uncommon varieties of stone which are subject to location unless their product commands a significantly higher price in the market place because of those characteristics than the other stone used for the same purpose.

United States v. R. W. Brubaker et al., A-30636
(July 24, 1968)

A deposit of limestone cannot be characterized as a deposit of an uncommon variety of limestone when the claimant fails to show what particular quality or use of the limestone makes it an uncommon variety.

Even if a deposit of limestone meets all other requirements necessary to constitute it an uncommon variety of stone it is not a valuable mineral deposit within the mining laws if the claimant cannot show that it is marketable at a profit.

United States v. Harold Ladd Pierce, A-30537
(Aug. 30, 1968) 75 I. D. 255

The Act of July 23, 1955, excludes from mining location only common varieties of the materials enumerated in the Act, i. e., "sand, stone, gravel, pumice, pumicite, or cinders"; therefore, a material must fall within one of those categories before the issue of whether it is a common variety becomes pertinent.

Where a stone containing mica can be ground and used as a whole rock for certain purposes, the issue may properly arise as to whether the particular stone is a common variety which is excluded from mining location by the act of July 23, 1955; but if the interest in the stone is simply for the mica to be extracted from the

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

stone and value is claimed only for the mica, the issue presented is not whether the stone is a common variety of stone but whether the mica constitutes a valuable mineral deposit which is locatable irrespective of the 1955 Act.

Where a deposit of sand has an allegedly valuable mica and feldspar content, its locatability may depend upon either whether the sand is locatable as an uncommon variety of sand because of its mica and feldspar content or whether the mica or feldspar constitute valuable minerals subject to location as mica or feldspar.

Lack of discovery is properly found in the case of deposits of common varieties of limestone, aplite, and mica schist where credible evidence purely theoretical evidence as to profitable operations are not sufficient to show a dicovery where the credibility of the evidence is open to question.

Lack of discovery is properly found in the case of deposits of mica and feldspar where credible evidence is lacking to show that the minerals can be marketed at a profit.

United States v. Harold Ladd Pierce, A-30564
(Aug. 30, 1968) 75 I. D. 270

To satisfy the requirements for discovery on a placer mining claim located for common varieties of sand and gravel before July 23, 1955, on land withdrawn from mining location after February 10, 1948, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit before the effective date of the withdrawal, and where the evidence shows that prior to that date no sales were made, the minor quantities of material were removed from the claim by the claimant for his own use and by others, with the claimant's consent and without any charge, and that no steps were taken before or after the withdrawal of the land to develop the claim as mining property, the fact that sand and gravel of similar quality were extracted and sold from other property in the vicinity of the claim is insufficient to show that material from the claim could have been profitably removed and marketed at the same time, and the claim is properly declared null and void.

United States v. Alfred N. Verrue, A-30618
(Sept. 17, 1968) 75 I. D. 300

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

The marketability of sand and gravel from a claim located after the act of July 23, 1955, for sand and gravel is not sufficient to validate the claim if the deposit has no property giving it a distinct and special value since under that act common varieties of sand and gravel must be disposed of under the Materials Act and are not locatable under the mining laws.

A sand and gravel deposit which may have the necessary qualities for road, tunnel and dam construction projects nearby and is marketable but has no property giving it a distinct and special value for such purposes or for other purposes for which other commonly available deposits may be used is a common variety within the meaning of the act of July 23, 1955, and, therefore, is not locatable under the mining laws.

Where a mining claim containing common varieties of sand and gravel not locatable under the mining laws also contains slight values of fine gold which the mining claimant alleges may profitably be extracted in connection with the removal and sale of sand and gravel from the claim, in order for the claim to be valid there must be sufficient gold of a quantity and quality to satisfy the prudent man test of a discovery of a valuable mineral deposit independently at the value of the sand and gravel.

United States v. Mt. Pinos Development Corp., A-30823 (Sept. 27, 1968) 75 I. D. 320

A large deposit of decomposed granite is properly held to be a common variety of stone where there is positive testimony that it is of poor quality unsuitable for road construction, except possibly as sub-base, and occurs extensively in a wide area and the only exceptional properties asserted for it are that it will carry heavy weight and drain well.

United States v. Owen O. Roberts et al., A-30941 (Oct. 15, 1968)

CONTESTS

The fact that a mining claim is located in a national forest does not qualify the rights of the locator in any way or increase the mineral values required to be shown in a mining contest, but, because the land on which the claim is situated is known to be valuable for purposes other than mining, the Department requires clear and convincing evidence of the values that are claimed in order to establish the validity of the claim.

MINING CLAIMS--Continued

CONTESTS--Continued

It is the duty of a mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners, and an examiner has no duty either to rehabilitate discovery points or to explore beyond the current workings of the mining claimant in an effort to verify a purported discovery.

United States v. Thomas C. Wells, A-30805 (Jan. 8, 1968)

The requirement of the Departmental regulation that service of a contest complaint be made on every contestee is satisfied by service at an address which the mineral locator, whose claim is being contested, has named in his mineral patent application as his post office mailing address for the mineral patent application proceedings.

Upon death of a mineral patent applicant prior to the service upon him of a contest complaint, service must be made upon his heirs or the legal representative of his estate and service at the deceased applicant's address of record is not binding upon his successors.

United States v. Robert N. Johnson et al., A-30828 (Jan. 29, 1968)

Under the Department's rules governing Government contests against mining claims, where an answer to a complaint is filed late the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the land office, and the rules will not be waived to permit acceptance of an answer which is not filed until after the issuance of a decision holding the contestee in default because he failed to file an answer.

United States v. Harold H. Hunter, A-30872 (Feb. 21, 1968)

The Government is not obligated to prove affirmatively in a mining contest either that the land claimed is nonmineral or that no discovery of a valuable mineral deposit within the limits of the claim has been made; when a Government mineral examiner testifies that he has examined a mining claim and has found no workings and no evidence of the existence of a mineral deposit, a prima facie case of no discovery has been made and, if unrebutted, will warrant a finding that there has been no discovery.

United States v. Frank Coston, A-30835 (Feb. 23, 1968)

MINING CLAIMS--Continued

CONTESTS--Continued

Mining claims are properly declared null and void on the basis of charges asserted in a government contest complaint where an amended answer filed by the contestee can reasonably be interpreted only as a request that a hearing on the charges be dismissed and that the claims be invalidated for a lack of discovery.

Dorothy Meyer Long, A-30821 (Feb. 28, 1968)

Where a contest is brought against a mining claim on the ground of lack of discovery, after the Government has made a prima facie showing that there has not been a discovery, the burden of proof is upon the contestees to show by a preponderance of the evidence that a discovery has been made.

United States v. David L. King, A-30867 (Feb. 28, 1968)

The Government is not obligated to prove affirmatively in a mining contest either that the land claimed is nonmineral or that no discovery of a valuable mineral deposit within the limits of a mining claim has been made; when a Government mineral examiner testifies that he has examined a mining claim and has found no mineralization to sample, a prima facie case of no discovery has been made and, if unrebutted, will warrant a finding that there has been no discovery.

Where a contest is brought against a mining claim on the ground of lack of discovery, after the Government has made a prima facie showing that there has not been a discovery, the burden of proof is upon the contestee to show by a preponderance of the evidence that a discovery has been made.

United States v. Adam J. Flurry, A-30887 (Mar. 5, 1968)

The Government is not obligated to prove affirmatively in a mining contest either that the land claimed is nonmineral or that no discovery of a valuable mineral deposit within the limits of the claim has been made; when a Government mineral examiner testifies that he has examined a mining claim and all of the workings thereon without finding evidence of the existence of a mineral deposit, a prima facie case of no discovery has been made which is not vitiated solely by the fact that the mining claimant was not invited to be present during the examination and which can only be rebutted by a showing,

MINING CLAIMS--Continued

CONTESTS--Continued

by a preponderance of the evidence, that a valuable mineral deposit has been discovered.

United States v. Esther R. Smith, A-30888 (Mar. 29, 1968)

Where the evidence relating to the marketability of deposits of minerals of widespread occurrence is inconclusive and is lacking in factual data, the case will be remanded for further hearing to develop the facts essential to a meaningful determination.

United States v. Gene DeZan et al., A-30515 (July 1, 1968)

Where mining claims have been declared null and void because of the contestee's failure to answer a complaint and the contestee thereafter appeals on the ground that the complaint was framed on the basis of a former rule of discovery which had in fact been changed by an appellate court at the time the contest was initiated but the contestee was not apprised of it, the contestee will not be relieved of its default where subsequent to its appeal the decision of the appellate court is reversed by the Supreme Court and the law of discovery which previously existed is affirmed.

United States v. Southern Nevada Disposal Service, Inc., A-30896 (July 25, 1968)

Where a Government contest is brought against a limestone placer mining claim located prior to July 23, 1955, charging that no discovery has been made because the minerals cannot be marketed at a profit and that an actual market has not been shown to exist, the charges cannot be properly construed as raising the issue of whether a valid discovery of a common variety of limestone had been made prior to July 23, 1955, where no evidence was offered on that issue at the hearing, where that issue was not adverted to by either party, and where the contestee asserts that he can prove that the deposits could have then been marketed at a profit; however, where the contestee's offer of proof is insufficient to show that the materials could have been marketed at a profit as of July 23, 1955, the case will not be remanded for a further hearing on this issue in the absence of an offer of meaningful proof.

United States v. Harold Ladd Pierce, A-30537 (Aug. 30, 1968) 75 I. D. 255

MINING CLAIMS--Continued

CONTESTS--Continued

The fact that a charge in a mining contest complaint may not adequately raise an issue does not vitiate a decision which rests upon that issue where the contestee examined and cross-examined witnesses on it, the record demonstrates that he was aware that the issue was important to the resolution of the contest, and he has not demonstrated that he has been prejudiced by the inartistic allegations of the complaint.

United States v. Harold Ladd Pierce, A-30564 (Aug. 30, 1968) 75 I. D. 270

Where a mining claimant fails to file an answer to a Government contest complaint charging that he has not made a discovery on his claim, the charge will be taken as admitted and the claim declared null and void.

United States v. Sheldon E. Evans, A-30923 (Sept. 30, 1968)

In a private contest initiated by a mining claimant to determine, as between himself and an oil and gas lessee, the right to leasable minerals within the limits of a mining claim, it is incumbent upon the mining claimant to show that a discovery was made upon the claim at a time when such discovery would vest in him a right to the leasable minerals, and if he is unable to sustain this burden, the contest is properly dismissed notwithstanding any acknowledgment on the part of the United States of a present discovery on the claim.

Marvel Mining Company v. Sinclair Oil and Gas Company et al., United States v. Marvel Mining Company, A-30871 (Dec. 30, 1968) 75 I. D. 407

The Government is not obligated to prove affirmatively in a mining contest either that the land claimed is nonmineral or that no discovery of a valuable mineral deposit within the limits of the claim has been made; when a Government mineral examiner testifies that he has examined the exposed workings on a claim, that he has taken mineral samples from points suggested by a representative of the mining claimant as demonstrating the best values found on the claim, and that he has found no evidence of the existence of a valuable mineral deposit, a prima facie case of no discovery had been made and, if unrebutted by competent evidence that minerals of sufficient value to meet the requirements of a discovery have been found, will warrant a finding that there has not been a discovery.

United States v. Mrs. Frances Swain, A-30926 (Dec. 30, 1968)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY

The fact that a mining claim is located in a national forest does not qualify the rights of the locator in any way or increase the mineral values required to be shown in a mining contest, but, because the land on which the claim is situated is known to be valuable for purposes other than mining, the Department requires clear and convincing evidence of the values that are claimed in order to establish the validity of the claim.

United States v. Thomas C. Wells, A-30805 (Jan. 8, 1968)

Where a hearing examiner has declared a mining claim to be null and void for lack of a discovery, his determination of the invalidity of the claim is a reasonable interpretation of the evidence presented at the hearing, and the mining claimant makes no attempt to show error in that particular finding in subsequent appeals from the hearing examiner's decision, the hearing examiner's conclusions will not be disturbed.

United States v. Sidney M. and Esther M. Heyser, A-30810 (Jan. 24, 1968) 75 I. D. 14

The validity of a mining claim depends upon the discovery of a valuable mineral deposit within the limits of the claim; the necessity of a discovery is not dispensed with by an alleged agreement between the Bureau of Land Management and the claimant that the latter will not work the claim while it remains within the boundaries of a national monument and that the claimant will not be deprived of mineral rights in the claim.

United States v. Eloise A. Overton, A-30822 (Feb. 16, 1968)

Where a mining claim is located on unsurveyed land but is described in a contest complaint in terms of a surveyed land description and this description differs from a surveyed land description in a deed of conveyance of the claim, the discrepancy in the descriptions does not affect a determination of invalidity of the claim where it is clear that the claim was actually located on the ground in the course of examining it for the purpose of determining its validity.

United States v. Arch Little and Ethelyn Little, A-30842 (Feb. 21, 1968)

Under the mining laws of the United States one may take possession of vacant public land open to location under those laws and, after filing notice of location, retain that possession against all except the Government while he is

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

in diligent prosecution of his efforts to discover valuable minerals therein, but, when the Government withdraws its consent to such location, either by withdrawing the land from the operation of the mining laws or by otherwise making it unavailable for mining operations, the locator must show that he has made a discovery of a valuable mineral deposit within the limits of the claim in order to retain his possession.

Geologic inference may be relied upon to establish the extent and potential value of a particular mineral deposit, but it may not be relied upon, as a substitute for the actual finding of a mineral deposit, to establish the existence of the deposit within the limits of a designated mining claim, and where a vein carrying some erratic values in mineralization has been exposed within the limits of a mining claim but the exposed mineralization does not constitute a mineral deposit capable of development and the existence of such a deposit in the vein within the limits of the claim can only be inferred, a discovery, within the meaning of the mining laws, has not been shown, and the claim is properly declared invalid.

United States v. Frank Coston, A-30835 (Feb. 23, 1968)

No hearing is required to declare mining claims invalid ab initio where at the time of location of the claims the land was not open to such location.

C. V. Armstrong et al., A-30889 (Feb. 28, 1968)

Mining claims are properly declared null and void on the basis of charges asserted in a government contest complaint where an amended answer filed by the contestee can reasonably be interpreted only as a request that a hearing on the charges be dismissed and that the claims be invalidated for a lack of discovery.

Dorothy Meyer Long, A-30821 (Feb. 28, 1968)

Where a contest is brought against a mining claim on the ground of lack of discovery, after the Government has made a prima facie showing that there has not been a discovery, the burden of proof is upon the contestees to show by a preponderance of the evidence that a discovery has been made.

United States v. David L. King, A-30867 (Feb. 28, 1968)

Where a contest is brought against a mining claim on the ground of lack of discovery, after the Government has made a prima facie showing that there has not been a discovery, the burden of proof is upon the contestee to show by a

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

preponderance of the evidence that a discovery has been made.

United States v. Adam J. Flurry, A-30887 (Mar. 5, 1968)

To determine whether a deposit of building stone or other substance listed in the act of July 23, 1955, is of a common or uncommon variety, there must be a comparison of the deposit with other deposits of similar type minerals in order to ascertain whether the deposit has a property giving it a distinct and special value. If the deposit is to be used for the same purposes as minerals of common occurrence, then there must be a showing that some property of the deposit gives it a special value for such use and that this value is reflected by the fact that the material commands a higher price in the market place. If, however, the stone or other mineral has some property making it useful for some purpose for which other commonly available materials cannot be used, this may adequately demonstrate that it has a distinct and special value.

United States v. U.S. Minerals Development Corporation, A-30407 (Apr. 30, 1968) 75 I. D. 127

Geologic inference may be relied upon to establish the extent and potential value of a particular mineral deposit, but it may not be relied upon, as a substitute for the actual finding of a mineral deposit, to establish the existence of the deposit within the limits of a designated mining claim, and where a vein carrying some erratic values in mineralization has been exposed within the limits of a mining claim but the exposed mineralization does not constitute a mineral deposit capable of development and the existence of such a deposit in the vein within the limits of the claim can only be inferred, a discovery, within the meaning of the mining laws, has not been shown, and the claim is properly declared invalid.

United States v. George A. and Dorothy Relyea, A-30909 (June 25, 1968)

To determine whether a deposit of building stone or other substance listed in section 3 of the act of July 23, 1955, is of a common or uncommon variety, there must be a comparison of the deposit with other deposits of similar type minerals in order to ascertain whether the deposit has a property giving it a distinct and special value. If the deposit is to be used for the same purposes as other minerals of common occurrence, it must possess some

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

property which gives it special value for such uses which value is reflected in the fact that it commands a higher price in the market place, or it must have some property which gives it value for purposes for which the other materials are not suited.

United States v. Gene DeZan et al., A-30515 (July 1, 1968)

Before a mineral patent can be issued it must be shown as a present fact that a mining claim is valuable for mining purposes, and if that fact is not established by a preponderance of the evidence, the patent application is properly rejected and the claim properly declared null and void; it is immaterial that the claim may have been successfully mined nearly 25 years before application for patent was filed.

United States v. Evelyn M. Kiggins et al., A-30827 (July 12, 1968)

The rejection of a state indemnity selection for a tract of land for the reason that a field report shows that the land is in an "apparently valid" mining claim does not constitute a binding determination as to the validity of the claim or foreclose a subsequent contest of the claim when the claimant later applies for a patent.

United States v. Harold Ladd Pierce, A-30537 (Aug. 30, 1968) 75 I. D. 255

A prudent man could not reasonably expect to develop a profitable mine for manganese where the deposit within the mining claims is unknown, and it appears to contain only low grade ores for which there is no market, or reasonable prospect for a market, therefore, there has not been a discovery of a valuable mineral deposit within the meaning of the mining laws and the claims are properly declared null and void and a mineral patent application for the claims is properly rejected.

There is no justification to issue a mineral patent for mining claims containing an unknown quantity of low grade manganese simply because some patents may have issued for similar-type of claims during World War II and during a period where an artificial market for low grade ores was created by a government stockpiling program giving an incentive price for ores, where there is now no market for such ores and no reasonable prospect of such a market.

United States v. Theodore R. Jenkins, A-30786 (Sept. 26, 1968) 75 I. D. 312

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Before a mineral patent can be issued it must be shown as a present fact that a mining claim is valuable for mining purposes, and if that fact is not established by the evidence, the patent application is properly rejected and the claim properly declared null and void; it is immaterial that at some future date, depending upon changed economic conditions or improved mining technology, a deposit of low-grade ore may become valuable for mining purposes.

United States v. W. S. Pekovich, A-30868 (Sept. 27, 1968)

The Secretary of the Interior may require into all matters vital to the validity or regularity of a mining claim at any time before the passage of legal title, and the fact that the validity of a portion of a contested mining claim was not challenged in a proceeding initiated by the Forest Service does not preclude inquiry into the validity of that portion of the claim by this Department if, upon review of the record of the contest proceedings, the Department is not satisfied that the claim is regular in all respects.

Where the validity of a portion of a contested placer mining claim located on land subsequently withdrawn from mining location is dependent upon a finding that, at the effective date of the withdrawal, the land was known to be mineral in character, but the contest complaint made no reference to the date of the determination of mineral character, and no evidence was introduced by either party to the contest bearing upon known conditions at the time of the withdrawal which related to the mineral character of the land, and where there is reason for doubting whether the allegations of the complaint accurately reflected the charges which the contestant proposed to substantiate, the proceeding will be set aside to permit the filing of a new complaint or amended complaint.

United States v. Clare Williamson, A-30640 (Oct. 23, 1968) 75 I. D. 338

A prudent man could not reasonably expect to develope a profitable mine for manganese where the extent of the deposit within the mining claims is unknown, and it appears to contain only low grade ores for which there is no market, or reasonable prospect for a market, therefore, there has not been a discovery of a valuable mineral deposit within the meaning of the mining laws and the claims are properly declared null and void and a mineral patent application for the claims is properly rejected.

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

There is no justification to issue a mineral patent for mining claims containing an unknown quantity of low grade manganese simply because some patents may have issued for similar-type claims during World War II and during a period where an artificial market for low grade ores was created by a government stockpiling program paying an incentive price for ores, where there is now no market for such ores and no reasonable prospect of such a market.

United States v. Thomas Kinder et al., A-30916 (Nov. 26, 1968)

Where the validity of a mining claim as of a date prior to examination of the claim to determine its validity is at issue, the date of the exposure of a mineralized area, not the date of the sampling of the mineralization, is determinative of the admissibility of assay reports and other data as evidence that there was or was not a discovery upon the claim at the critical date; where a witness in a mining contest fails to distinguish between mineralization exposed prior to the crucial date and that exposed thereafter and to explain the significance of each as it relates to the vital issue, his opinion that there is a discovery at the present time is of little or no value in establishing the date of the alleged discovery.

The Secretary of the Interior may inquire into all matters vital to the validity or regularity of a mining claim at any time before the passage of legal title, and the failure of the Government to contest a mining claim after its mineral examiner has examined the claim in response to an application for patent and has recommended that the claim not be contested is not a bar to further inquiry into the validity of the claim if, upon further review of the case, it appears that there has not been a discovery.

Marvel Mining Company v. Sinclair Oil and Gas Company et al., United States v. Marvel Mining Company, A-30871 (Dec. 30, 1968) 75 I. D. 407

DISCOVERY

It is the duty of a mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners, and an examiner has no duty either to rehabilitate discovery points or to explore beyond the current workings of the mining claimant in an effort to verify a purported discovery.

MINING CLAIMS--Continued

DISCOVERY--Continued

Where a discovery of a valuable deposit of gold is based upon an estimate of a certain quantity of gold bearing gravel of a certain value, which is purportedly established by geologic studies, geophysical tests, core drilling and excavations made by the claimant, and an analysis of the claimant's evidence shows that it does not support his conclusions but contradicts them, the claim is properly held to be null and void for lack of discovery.

United States v. Thomas C. Wells, A-30805 (Jan. 8, 1968)

To constitute a valid discovery upon a lode mining claim there must be actually and physically exposed within the limits thereof a vein or lode of mineral-bearing rock in place, possessing in and of itself value for mining purposes. It is not sufficient that there is exposed a vein or lode, carrying values of $7.40 or less per ton in gold and silver, which is similar in mineralogy and occurrence to other veins in the area that were successfully mined in the past, upon which is based a hope that further exploration may disclose an "economically exploitable ore chute."

The Department does not require a mining claimant to demonstrate that he can deprive profits as a present certainty in order to establish that he has a valid discovery.

The requirement that in order to establish a valid discovery a claimant must show that "exploration" work has progressed to the point where a prudent man would be justified in going ahead with "development" work does not constitute a requirement of a showing of "present profitability," for such a requirement, in effect, is no more than establishing that there is actually and physically exposed on the claim a vein of mineral-bearing rock in place possessing in and of itself value for mining purposes, from which, together with other factors, the reasonableness of the prospect of success in developing a valuable mine may be determined.

United States v. Ralph Fairchild, A-30803 (Jan. 19, 1968)

To constitute a valid discovery upon a lode mining claim there must be a discovery of a vein in place carrying a valuable mineral deposit which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there are exposed several quartz veinlets less than three inches wide, carrying values in gold and silver as high as $230 per ton, where the claimant has not shown the existence of the minerals in quantities valuable for mining purposes.

United States v. Jesse W. Crawford, A-30820 (Jan. 29, 1968)

MINING CLAIMS--Continued

DISCOVERY--Continued

To constitute a valid discovery upon a lode mining claim there must exist within the limits of the claim a vein or lode in place carrying minerals of a quality and quantity which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is mineralization exposed, in and of itself valueless for mining purposes, upon which is based a hope that further exploration will disclose a valuable mineral deposit.

United States v. C. T. Fredrickson, A-30848
(Jan. 29, 1968)

The validity of a mining claim depends upon the discovery of a valuable mineral deposit within the limits of the claim; the necessity of a discovery is not dispensed with by an alleged agreement between the Bureau of Land Management and the claimant that the latter will not work the claim while it remains within the boundaries of a national monument and that the claimant will not be deprived of mineral rights in the claim.

To constitute a valid discovery upon a lode mining claim there must be a discovery of a vein in place carrying a valuable mineral deposit which would warrant a prudent man in the expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine; showings of copper mineralization of "20% and better" are not sufficient where no evidence is presented establishing the quantity of such mineralization.

United States v. Eloise A. Overton, A-30822
(Feb. 16, 1968)

To constitute a valid discovery upon a lode mining claim there must be a discovery on the claim of a lode or vein bearing mineral which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is only a showing which would warrant further exploration in the hope of finding a valuable deposit.

Geologic inference may be relied upon to establish the extent and potential value of a particular mineral deposit, but it may not be relied upon, as a substitute for the actual finding of a mineral deposit, to establish the existence of the deposit within the limits of a designated mining claim, and where a vein carrying some erratic values in mineralization has been exposed within the limits of a mining claim but the exposed mineralization does not constitute a mineral deposit capable of development and the existence of such a deposit in the vein within the limits of the claim can only be inferred, a discovery, within the meaning of the mining laws, has not been shown, and the claim is properly declared invalid.

MINING CLAIMS--Continued

DISCOVERY--Continued

The Government is not obligated to prove affirmatively in a mining contest either that the land claimed is non-mineral or that no discovery of a valuable mineral deposit within the limits of the claim has been made; when a Government mineral examiner testifies that he has examined a mining claim and has found no workings and no evidence of the existence of a mineral deposit, a prima facie case of no discovery has been made and, if unrebutted, will warrant a finding that there has been no discovery.

United States v. Frank Coston, A-30835
(Feb. 23, 1968)

To constitute a valid discovery on a mining claim there must be shown to exist within the limits of the claim a valuable deposit of mineral which would warrant a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, and where a mining claimant bases his claim of a discovery on showings of relatively minor gold values without explanation of the manner in which those values were computed, without evidence as to the extent or the consistency of the mineralization on the mining claim and without evidence that minerals of the value claimed could be profitably mined, a discovery has not been demonstrated.

United States v. David L. King, A-30867
(Feb. 28, 1968)

To constitute a valid discovery upon a lode mining claim there must be a discovery on the claim of a lode or vein bearing mineral which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is mineralization exposed, in and of itself valueless for mining purposes, upon which is based a hope that further exploration will disclose a valuable mineral deposit at depth.

The Government is not obligated to prove affirmatively in a mining contest either that the land claimed is nonmineral or that no discovery of a valuable mineral deposit within the limits of a mining claim has been made; when a Government mineral examiner testifies that he has examined a mining claim and has found no mineralization to sample, a prima facie case of no discovery has been made and, if unrebutted, will warrant a finding that there has been no discovery.

United States v. Adam J. Flurry, A-30887
(Mar. 5, 1968)

MINING CLAIMS--Continued

DISCOVERY--Continued

To constitute a valid discovery upon a mining claim there must be shown to exist within the limits of the claim a valuable deposit of mineral which would warrant a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, and, where a claim is based upon a lode location, there must be exposed within the limits of the claim a lode or vein bearing mineral which would warrant the expenditure of labor and means with the same prospect of success; it is not sufficient to show that a few tons of chromite-bearing float rock were taken from a claim and sold or that some gold may have been taken from a claim where the evidence shows that chromite ore of the quality previously taken from the claim cannot be mined for its current market value and that the deposits from which ore was taken have apparently been exhausted and where there is no evidence of the finding of gold in such quality as to justify any expectation of developing a valuable mine.

The Government is not obligated to prove affirmatively in a mining contest either that the land claimed is nonmineral or that no discovery of a valuable mineral deposit within the limits of the claim has been made; when a Government mineral examiner testifies that he has examined a mining claim and all of the workings thereon without finding evidence of the existence of a mineral deposit, a prima facie case of no discovery has been made which is not vitiated solely by the fact that the mining claimant was not invited to be present during the examination and which can only be rebutted by a showing, by a preponderance of the evidence, that a valuable mineral deposit has been discovered.

United States v. Esther R. Smith, A-30888 (Mar. 29, 1968)

To constitute a valid discovery upon a lode mining claim there must be a discovery on the claim of a lode or vein bearing mineral which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is only a showing which would warrant further exploration in the hope of finding a valuable deposit.

Geologic inference may be relied upon to establish the extent and potential value of a particular mineral deposit, but it may not be relied upon, as a substitute for the actual finding of a mineral deposit, to establish the existence of the deposit within the limits of a designated mining claim, and where a vein carrying some erratic values in mineralization has been exposed within the limits of a mining claim but the exposed mineralization does not constitute a mineral deposit capable of development and the existence of such a deposit in the vein within the limits of the claim can only be

MINING CLAIMS--Continued

DISCOVERY--Continued

inferred, a discovery, within the meaning of the mining laws, has not been shown, and the claim is properly declared invalid.

United States v. George A. and Dorothy Relyea, A-30909 (June 25, 1968)

To satisfy the requirement of a discovery on placer mining claims located for deposits of limestone, dolomite and wollastonite, it must be shown that the deposits can be mined and marketed at a profit.

United States v. Gene DeZan et al., A-30515 (July 1, 1968)

To satisfy the requirements of discovery on placer mining claims located for sand and gravel before July 23, 1955, it must be shown that the deposit could, prior to that date, have been extracted, removed and marketed at a profit, and where the evidence shows that up to that date substantial amounts of material had been sold only as pit run for fill or other such purposes and only a minute amount had been sold for a few dollars as concrete aggregates and that, at the most, there was only a potential future market for qualifying uses on that date, the claims are properly declared null and void.

United States v. William M. Hinde et al., A-30634 (July 9, 1968)

To constitute a discovery upon a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing mineral of such quality and in such quantity as to warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is exposed mineralization which merely gives rise to a hope or expectation that a valuable mineral deposit may be found upon further exploration.

United States v. Evelyn M. Kiggins et al., A-30827 (July 12, 1968)

To constitute a valid discovery upon a lode mining claim there must be a discovery within the limits of the claim of a lode or vein bearing mineral which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient to show only slight mineralization of little value which merely suggests the possibility that a valuable mineral deposit may exist.

United States v. Walter L. and Thelma M. Bossard, A-30784 (July 16, 1968)

MINING CLAIMS--Continued

DISCOVERY--Continued

To satisfy the requirements of discovery on a placer mining claim located for cinders prior to July 23, 1955, it must be shown that the deposit could, prior to that date, have been extracted, removed and marketed at a profit, and where the only evidence of marketability at a profit is a showing that thousands of tons of cinders were removed by others with the permission of the claimants at no cost above actual operating expense to the users the claim is properly declared null and void.

United States v. John C. Chapman et al., A-30581 (July 16, 1968)

Lode mining claims are properly declared to be invalid where the evidence shows that only low mineral values have been found on the claims and the claimant fails to offer any evidence of more substantial values that were found prior to the date that the land in the claims was withdrawn from location.

United States v. Stella Wagnon Wilson et al., A-30787 (July 23, 1968)

To satisfy the requirement that deposits of minerals of widespread occurrence be "marketable" it is not enough that they are capable of being sold but it must be shown that the mineral from the particular deposit could have been extracted, sold, and marketed at a profit.

Lack of discovery is properly found in the case of deposits of common varieties of limestone, aplite, and mica schist where credible evidence is lacking that materials from the deposits could have been marketed at a profit as of July 23, 1955; evidence that a general market for the materials existed as of that date and purely theoretical evidence as to profitable operations are not sufficient to show a discovery where the credibility of the evidence is open to question.

Lack of discovery is properly found in the case of deposits of mica and feldspar where credible evidence is lacking to show that the minerals can be marketed at a profit.

United States v. Harold Ladd Pierce, A-30564 (Aug. 30, 1968) 75 I. D. 270

To satisfy the requirements for discovery on a placer mining claim located for common varieties of sand and gravel before July 23, 1955, on land withdrawn from mining location after February 10, 1948, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit before the effective date of the withdrawal, and where the evidence shows that prior to that date no sales were made, that minor

MINING CLAIMS--Continued

DISCOVERY--Continued

quantities of material were removed from the claim by the claimant for his own use and by others, with the claimant's consent and without any charge, and that no steps were taken before or after the withdrawal of the land to develop the claim as mining property, the fact that sand and gravel of similar quality were extracted and sold from other property in the vicinity of the claim is insufficient to show that material from the claim could have been profitably removed and marketed at the same time, and the claim is properly declared null and void.

United States v. Alfred N. Verrue, A-30618 (Sept. 17, 1968) 75 I. D. 300

A prudent man could not reasonably expect to develop a profitable mine for manganese where the deposit within the mining claims is unknown, and it appears to contain only low grade ores for which there is no market, or reasonable prospect for a market, therefore, there has not been a discovery of a valuable mineral deposit within the meaning of the mining laws and the claims are properly declared null and void and a mineral patent application for the claims is properly rejected.

There is no justification to issue a mineral patent for mining claims containing an unknown quantity of low grade manganese simply because some patents may have issued for similar-type of claims during World War II and during a period where an artificial market for low grade ores was created by a government stockpiling program giving an incentive price for ores, where there is now no market for such ores and no reasonable prospect of such a market.

United States v. Theodore R. Jenkins, A-30786 (Sept. 26, 1968) 75 I. D. 312

Where a mining claim containing common varieties of sand and gravel not locatable under the mining laws also contains slight values of fine gold which the mining claimant alleges may profitably be extracted in connection with the removal and sale of sand and gravel from the claim, in order for the claim to be valid there must be sufficient gold of a quantity and quality to satisfy the prudent man test of a discovery of a valuable mineral deposit independently at the value of the sand and gravel.

A showing of mineral values which might warrant further exploration for minerals within a mining claim but would not warrant development of a mine is insufficient to establish a discovery of a valuable mineral deposit under the mining laws.

United States v. Mt. Pinos Development Corp., A-30823 (Sept. 27, 1968) 75 I. D. 320

MINING CLAIMS--Continued

DISCOVERY--Continued

To constitute a valid discovery on a mining claim there must be shown to exist within the limits of the claim a valuable deposit of mineral which would warrant a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; evidence of the existence of a large deposit of low-grade iron ore, the mining, benefication and transportation costs of which would exceed the value of the ore produced, is insufficient to establish the discovery of a "valuable" mineral deposit.

United States v. W. S. Pekovich, A-30868 (Sept. 27, 1968)

Mining claims located for a deposit of a common variety of decomposed granite are properly held to be invalid where the claimants fail to show by preponderant evidence that the material could have been marketed at a profit prior to July 23, 1955.

United States v. Owen O. Roberts et al., A-30941 (Oct. 15, 1968)

In applying the prudent man test to determine whether there has been a discovery of a valuable mineral deposit within the meaning of the mining laws, the market price of the mineral product may be considered and weighed with the anticipated costs of the operation in order to determine whether a prudent man would expend further labor and means with a reasonable expectation of developing a profitable mine.

A prudent man could not reasonably expect to develop a profitable mine for manganese where the extent of the deposit within the mining claims is unknown, and it appears to contain only low grade ores for which there is no market, or reasonable prospect for a market, therefore, there has not been a discovery of a valuable mineral deposit within the meaning of the mining laws and the claims are properly declared null and void and a mineral patent application for the claims is properly rejected.

There is no justification to issue a mineral patent for mining claims containing an unknown quantity of low grade manganese simply because some patents may have issued for similar-type claims during World War II and during a period where an artificial market for low grade ores was created by a government stockpiling program paying an incentive price for ores, where there is now no market for such ores and no reasonable prospect of such a market.

United States v. Thomas Kinder et al., A-30916 (Nov. 26, 1968)

In applying the prudent man test of discovery to determine whether there has been a discovery of a valuable mineral deposit within a mining claim, the marketability at a profit of low-grade deposits of manganese ore is a determinative factor.

Mining claims containing an unknown quantity of low-grade manganese ore are properly declared subject to the limitations under section 4 of the Surface Resources Act of July 23, 1955, where the evidence shows that a prudent man could not now expect to develop a valuable mine because there is no market for the ore, regardless of whether under more favorable market conditions created primarily by a Government stockpiling program paying incentive prices prior to the date of that act the prudent man would have had more basis for anticipating that such ore could be mined and sold.

United States v. A. Speckert, A-30917 (Nov. 29, 1968) 75 I. D. 367

To constitute a valid discovery upon a lode mining claim there must be exposed within the limits of the claim a lode or vein bearing mineral which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is not sufficient that there is only a showing which would warrant further exploration in the hope of finding a valuable mineral deposit.

Marvel Mining Company v. Sinclair Oil and Gas Company et al., United States v. Marvel Mining Company, A-30871 (Dec. 30, 1968) 75 I. D. 407

To demonstrate a valid discovery upon a mining claim it must be shown that minerals have been found within the limits of the claim in such quantity and of such quality as to warrant a man of ordinary prudence in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine; it is immaterial to show that a new process of mineral processing may permit greater mineral recovery than is possible with the use of conventional methods, thereby making it possible to mine, at a profit, poorer quality minerals than have been previously mined, when no showing has been made that minerals of such quality exist in such quantities as to make a profitable operation reasonably possible.

The Government is not obligated to prove affirmatively in a mining contest either that the land claimed is nonmineral or that no discovery of a valuable mineral deposit within the limits of the claim has been made; when a Government mineral examiner testifies that he has examined the exposed workings on a claim, that he has taken mineral samples from points suggested by a representative of the mining claimant as demonstrating the best values found on the claim, and that he has found no evidence of the existence of a valuable mineral deposit, a prima facie case of no discovery had been made and, if unrebutted by competent evidence that

MINING CLAIMS--Continued

DISCOVERY--Continued

minerals of sufficient value to meet the requirements of a discovery have been found, would warrant a finding that there has not been a discovery.

United States v. Mrs. Frances Swain, A-30926 (Dec. 30, 1968)

HEARINGS

Although exclusionary rules of evidence applicable in court proceedings need not be followed in administrative hearings, a hearing examiner in the interest of fair play and justice may either exclude or, at least, give little weight to a written, uncorroborated statement by a mining claimant who submits the statement in lieu of making an appearance at the hearing.

United States v. Arch Little and Ethelyn Little, A-30842 (Feb. 21, 1968)

No hearing is required to declare mining claims invalid ab initio where at the time of location of the claims the land was not open to such location.

C. V. Armstrong et al., A-30889 (Feb. 28, 1968)

Where a hearing has been held in a mining contest, the record made at the hearing shall be the sole basis for a decision, and evidence submitted at a later date cannot be considered in deciding the case on the merits but can be considered to determine whether or not a further hearing is warranted; where there is no showing that a further hearing would be productive of more conclusive evidence on the question of discovery than has been developed, there is no basis for remanding the case for that purpose.

United States v. David L. King, A-30867 (Feb. 28, 1968)

A stipulation between the Government's attorney and the mining claimant's attorney at a hearing to determine whether a building stone is of a common or uncommon variety under the act of July 23, 1955, that the stone is marketable, does not preclude a further hearing to consider whether the facts relating to the marketability demonstrate that the stone has some property giving it a distinct and special value over other stones used for the same purposes which are also marketable but are considered to be of a common variety.

United States v. U. S. Minerals Development Corporation, A-30407 (Apr. 30, 1968) 75 I. D. 127

MINING CLAIMS--Continued

HEARINGS--Continued

A new hearing in a mining contest will not be granted for the purpose of determining the feasibility of a new process for recovering gold where no evidence is offered that the contested mining claim contains sufficient quantities of gold to indicate a reasonable prospect of profitable mining operations even if the new recovery process is proven to be workable.

United States v. Mrs. Frances Swain, A-30926 (Dec. 30, 1968)

LANDS SUBJECT TO

A mining claim located before August 11, 1955, on land within an existing powersite classification is null and void because the land was then unavailable for mining location.

Armin Speckert, A-30854 (Jan. 10, 1968)

Lands which were reserved from mining location by reason of inclusion in an application for a power project filed prior to August 11, 1955, and which were opened to location by section 2 of the act of August 11, 1955, become closed to location thereafter if they come under examination and survey by a prospective licensee holding an uncanceled preliminary permit issued by the Federal Power Commission after August 11, 1955, and mining claims on such lands located thereafter are void ab initio.

Mining claims located on land in a first form reclamation withdrawal are properly declared to be null and void ab initio.

A. L. Snyder et al., A-30880 (Feb. 14, 1968) 75 I. D. 33

Lands classified for disposition under and leased pursuant to the Recreation and Public Purposes Act are not subject to mining locations and mining claims located on such lands are properly held null and void ab initio.

C. V. Armstrong et al., A-30889 (Feb. 28, 1968)

A classification of land by Bureau motion for disposition under the Recreation and Public Purposes Act segregates the land from mineral locations even if the classification is not published in newspapers or the Federal Register and is only noted on a land office supplemental plat, and it is proper for the Bureau of Land Management to declare a mining claim null and void ab initio because of the classification.

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Although the Recreation and Public Purposes Act and regulations thereunder provide in effect that if no application is filed for lands classified on Bureau motion for disposition under that act within 18 months from the classification then the Secretary shall restore the land for appropriation under other public land laws, such a provision is not self-executing and the lands remain segregated from mineral location after the 18-month period where no action has been taken to restore the lands to appropriation under the mining laws.

R. C. Buch, A-30777 (June 4, 1968)
75 I. D. 140

Lands in national parks are not subject to leasing under the Mineral Leasing Act.

Gene R. Blaney, A-30894 (June 11, 1968)

Mining claims are properly declared to be null and void ab initio where the land in the claims had at the time of location been included in an application for withdrawal which was noted on the records of the land office.

Albert Gardini, John Baldrica, A-30958 (Oct. 16, 1968)

LOCATION

Because Revised Statute 2320 provides that no lode mining claim shall extend more than 300 feet on each side of the middle of the vein at the surface, a patent applicant should indicate the direction of the vein and adjust his survey accordingly if the course of the vein diverges from a line through the center of the claim and one of the side lines is more than 300 feet from the center of the vein.

United States v. George A. and Dorothy Relyea, A-30909 (June 25, 1968)

LODE CLAIMS

To constitute a valid discovery upon a mining claim there must be shown to exist within the limits of the claim a valuable deposit of mineral which would warrant a prudent man in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, and, where a claim is based upon a lode location, there must be exposed within the limits of the claim a lode or vein bearing mineral which would warrant the expenditure of labor and means with the same prospect of success; it is not sufficient to show that a few tons of chromite-bearing float rock were taken from a claim and sold or that some gold may have been taken from a claim where the evidence shows that chromite ore of the quality previously taken from the claim cannot be mined for its current market value and that the deposits from which ore was taken have apparently been exhausted and where there is no evidence of the finding of gold in such quality as to justify any expectation of developing a valuable mine.

MINING CLAIMS--Continued

LODE CLAIMS--Continued

United States v. Esther R. Smith, A-30888 (Mar. 29, 1968)

Because Revised Statute 2320 provides that no lode mining claim shall extend more than 300 feet on each side of the middle of the vein at the surface, a patent applicant should indicate the direction of the vein and adjust his survey accordingly if the course of the vein diverges from a line through the center of the claim and one of the side lines is more than 300 feet from the center of the vein.

United States v. George A. and Dorothy Relyea, A-30909 (June 25, 1968)

MILL SITES

Where a millsite is used for mining and milling purposes in connection with a mining claim that is held to be invalid, and the claimant does not show that the millsite is being used for mining and milling purposes in connection with any other mining claim, the millsite is properly declared to be invalid.

United States v. Jesse W. Crawford, A-30820 (Jan. 29, 1968)

The validity of a mill site that is used in connection with mining operation on a vein or lode is necessarily dependent upon the validity of the lode claim to which it is appurtenant.

United States v. Frank Coston, A-30835 (Feb. 23, 1968)

MINING CLAIMS--Continued

MILL SITES--Continued

A millsite may be declared invalid for failure to satisfy the statutory requirements pertinent to it even though no contest is brought against the mining claim with which it is associated.

The United States may bring adverse proceedings against a millsite location even though the land is no longer open to such location since the United States can at any time withdraw its consent to mineral disposition of public land by withdrawal of the land or by requiring a claimant to prove his right to a mineral location.

A millsite that is not being used or occupied for a milling or mining purpose is properly declared invalid; a prospective or intended use for such purposes is not enough to validate the location.

The mere naked possession of water on a millsite location which has not been improved or used or occupied for a mining or milling purpose does not satisfy the statutory requirements for location of a millsite.

The use of a small cabin on a millsite for occasional use as a campsite in connection with a group of mining claims on which there is no producing mine does not constitute such use or occupancy for milling or mining purposes as is required by the pertinent statute.

United States v. W. E. Polk, A-30859 (Apr. 17, 1968)

MINERAL SURVEYS

Because Revised Statute 2320 provides that no lode mining claim shall extend more than 300 feet on each side of the middle of the vein at the surface, a patent applicant should indicate the direction of the vein and adjust his survey accordingly if the course of the vein diverges from a line through the center of the claim and one of the side lines is more than 300 feet from the center of the vein.

United States v. George A. and Dorothy Relyea, A-30909 (June 25, 1968)

MINING CLAIMS--Continued

PATENT

Geologic inference may be relied upon to establish the extent and potential value of a particular mineral deposit, but it may not be relied upon, as a substitute for the actual finding of a mineral deposit, to establish the existence of the deposit within the limits of a designated mining claim, and where a vein carrying some erratic values in mineralization has been exposed within the limits of a mining claim but the exposed mineralization does not constitute a mineral deposit capable of development and the existence of such a deposit in the vein within the limits of the claim can only be inferred, a discovery, within the meaning of the mining laws, has not been shown, and the claim is properly declared invalid.

United States v. Frank Coston, A-30835 (Feb. 23, 1968)

Geologic inference may be relied upon to establish the extent and potential value of a particular mineral deposit, but it may not be relied upon, as a substitute for the actual finding of a mineral deposit, to establish the existence of the deposit within the limits of a designated mining claim, and where a vein carrying some erratic values in mineralization has been exposed within the limits of a mining claim but the exposed mineralization does not constitute a mineral deposit capable of development and the existence of such a deposit in the vein within the limits of the claim can only be inferred, a discovery, within the meaning of the mining laws, has not been shown, and the claim is properly declared invalid.

United States v. George A. and Dorothy Relyea, A-30909 (June 25, 1968)

Before a mineral patent can be issued it must be shown as a present fact that a mining claim is valuable for mining purposes, and if that fact is not established by a preponderance of the evidence, the patent application is properly rejected and the claim properly declared null and void; it is immaterial that the claim may have been successfully mined nearly 25 years before application for patent was filed.

United States v. Evelyn M. Kiggins et al., A-30827 (July 12, 1968)

Before a mineral patent can be issued it must be shown as a present fact that a mining claim is valuable for mining purposes, and if that fact is not established by the evidence, the patent application is properly rejected and the claim

MINING CLAIMS--Continued

PATENT--Continued

properly declared null and void; it is immaterial that at some futute date, depending upon changed economic conditions or improved mining technology, a deposit of low-grade ore may become valuable for mining purposes.

United States v. W. S. Pekovich, A-30868 (Sept. 27, 1968)

Where a discovery of a valuable mineral deposit within the limits of a mining claim prior to the filing of an oil and gas lease offer covering the land embraced in the claim is not established in a private contest instituted by the claimant for the purpose of determining his right to the leasable minerals, a patent to the mining claim issued after August 13, 1954, must contain a reservation to the United States of all leasing act minerals to the extent required by the act of August 13, 1954.

Marvel Mining Company v. Sinclair Oil and Gas Company et al., United States v. Marvel Mining Company, A-30871 (Dec. 30, 1968) 75 I. D. 407

PLACER CLAIMS

To establish the mineral character of land, now closed to mining location, embraced in a placer mining claim, it must be shown that known conditions, as of a date when the land was open to mining location, were such as resonably to engender the belief that the lands contain mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

United States v. Clare Williamson, A-30640 (Oct. 23, 1968) 75 I. D. 338

POSSESSORY RIGHT

Under the mining laws of the United States one may take possession of vacant public land open to location under those laws and, after filing notice of location, retain that possession against all except the Government while he is in diligent prosecution of his efforts to discover valuable minerals therein, but, when the Government withdraws its consent to such location, either by withdrawing the land from the operation of the mining laws or by otherwise making it unavailable for mining operations, the locator must show that he has made a discovery of a valuable mineral deposit within the limits of the claim in order to retain his possession.

United States v. Frank Coston, A-30835 (Feb. 23, 1968)

MINING CLAIMS--Continued

POWER SITE LANDS

A mining claim located before August 11, 1955, on land within an existing powersite classification is null and void because the land was then unavailable for mining location.

Armin Speckert, A-30854 (Jan. 10, 1968)

Lands which were reserved from mining location by reason of inclusion in an application for a power project filed prior to August 11, 1955, and which were opened to location by section 2 of the act of August 11, 1955, become closed to location thereafter if they come under examination and survey by a prospective licensee holding an uncanceled preliminary permit issued by the Federal Power Commission after August 11, 1955, and mining claims on such lands located thereafter are void ab initio.

A. L. Snyder et al., A-30880 (Feb. 14, 1968) 75 I. D. 33

SPECIAL ACTS

In a proceeding under section 5 of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of his mining claims, the claims are properly subjected to the limitations and restrictions of section 4 of that act unless it is shown that a valid discovery within the meaning of the mining laws was made within the limits of each claim prior to the date of the act.

United States v. Adam J. Flurry, A-30887 (Mar. 5, 1968)

The act of July 23, 1955, had the effect of excluding from the coverage of the mining laws "common varieties" of building stone, but left the act of August 4, 1892, authorizing the location of building stone placer mining claims effective as to building stone that has "some property giving it distinct and special value."

United States v. U. S. Minerals Development Corporation, A-30407 (Apr. 30, 1968) 75 I. D. 127

MINING CLAIMS--Continued

SURFACE USES

In a proceeding under section 5 of the act of July 23, 1955, to determine the rights of a mining claimant to the surface resources of his mining claim, the claim is properly subject to the limitations and restrictions of section 4 of that act unless it is shown that there was a valid discovery of a valuable mineral deposit within the meaning of the mining laws within the limits of the claim prior to the date of the act.

United States v. C. T. Fredrickson, A-30848 (Jan. 29, 1968)

A mining claim is properly declared subject to the act of July 23, 1955, if the claimant fails to show the discovery of a valuable mineral deposit within the limits of the claim.

United States v. David L. King, A-30867 (Feb. 28, 1968)

In a proceeding under section 5 of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of his mining claims, the claims are properly subjected to the limitations and restrictions of section 4 of that act unless it is shown that a valid discovery within the meaning of the mining laws was made within the limits of each claim prior to the date of the act.

United States v. Adam J. Flurry, A-30887 (Mar. 5, 1968)

A mining claim is properly declared subject to the act of July 23, 1955, if the mining claimant fails to show the existence, within the limits of the claim, of a valuable mineral deposit which was discovered prior to the date of the act.

United States v. Esther R. Smith, A-30888 (Mar. 29, 1968)

Since Congress limited the effect of a proceeding under section 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the surface resources of a mining claim, a claim is not declared null and void as a result of such a proceeding decided in favor of the Government, and the claimant may continue to engage in mining activities although he is not entitled to the use and management of the surface resources for other than mining purposes prior to issuance of patent for the claim.

In a proceeding under section 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the surface resources of a mining claim

MINING CLAIMS--Continued

SURFACE USES--Continued

prior to patent, the Government will prevail if it is shown that there was not a discovery of a valuable mineral deposit as of the date of the act even if such a discovery is subsequently made, and it will also prevail if a discovery existed as of the date of the act but it is determined that thereafter a valuable mineral deposit does not exist within the claims because of a change in conditions.

Mining claims containing an unknown quantity of low-grade manganese ore are properly declared subject to the limitations under section 4 of the Surface Resources Act of July 23, 1955, where the evidence shows that a prudent man could not now expect to develop a valuable mine because there is no market for the ore, regardless of whether under more favorable market conditions created primarily by a Government stockpiling program paying incentive prices prior to the date of that act the prudent man would have had more basis for anticipating that such ore could be mined and sold.

United States v. A. Speckert, A-30917 (Nov. 29, 1968) 75 I. D. 367

Where a mineral locator seeks to carry on mining operations on a claim located within a patented stock-raising homestead entry, he need post a bond sufficient to cover only damage to crops, to improvements, and to the value of the land for grazing purposes within the limits of the mining claim and not one sufficient to cover damages caused by a disruption of the surface owners' entire grazing operation.

L. W. Hansen, Anthony & Betty Bubany, A-31029 (Dec. 30, 1968)

WITHDRAWN LAND

A mining claim located before August 11, 1955, on land within an existing powersite classification is null and void because the land was then unavailable for mining location.

Armin Speckert, A-30854 (Jan. 10, 1968)

Lands which were reserved from mining location by reason of inclusion in an application for a power project filed prior to August 11, 1955, and which were opened to location by section 2 of the act of August 11, 1955, become closed

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

to location thereafter if they come under examination and survey by a prospective licensee holding an uncanceled preliminary permit issued by the Federal Power Commission after August 11, 1955, and mining claims on such lands located thereafter are void ab initio.

Mining claims located on land in a first form reclamation withdrawal are properly declared to be null and void ab initio.

A. L. Snyder et al., A-30880 (Feb. 14, 1968)
75 I. D. 33

Mining claims are properly declared to be null and void ab initio where the land in the claims had at the time of location been included in an application for withdrawal which was noted on the records of the land office.

Albert Gardini, John Baldrica, A-30958
(Oct. 16, 1968)

MINING OCCUPANCY ACT

GENERALLY

An applicant for the conveyance of land under the Mining Claims Occupancy Act is not entitled as a matter of right to a hearing on the question of the facts relating to his qualifications as an applicant, and a hearing is properly denied where the applicant fails to allege the existence of facts which, if proved, would entitle him to the relief sought.

Eveline and John Anthony Schaefer, A-30901
(May 21, 1968)

CONVEYANCES

Where a qualified applicant for the conveyance of an interest in land pursuant to the act of October 23, 1962, has been offered a lease of the land for a period not to exceed his own lifetime, such limitation having been imposed upon the

MINING OCCUPANCY ACT--Continued

CONVEYANCES--Continued

request of a municipality for the benefit of which the land has been withdrawn, and where, upon reconsideration, the municipality agrees to modified lease terms, the terms of the lease offer will be amended to conform with those approved by the municipality.

Walter Tampson, A-30938 (Nov. 13, 1968)

PRINCIPAL PLACE OF RESIDENCE

A cabin which is used only intermittently during vacations, weekends or other brief periods during summer months while regular residence is concurrently maintained elsewhere does not constitute a principal place of residence within the meaning of section 2 of the act of October 23, 1962, and an application for the conveyance of land based upon such use is properly rejected.

Robert L. and Rose Shipley, A-30877
(Apr. 25, 1968)

A cabin which has been used intermittently or sporadically while regular residence was concurrently maintained elsewhere, and which is not shown to have been needed for residential purposes, does not constitute a principal place of residence within the meaning of sec. 2 of the act of Oct. 23, 1962.

Eveline and John Anthony Schaefer, A-30901
(May 21, 1968)

A cabin which is used intermittently or sporadically for brief periods which regular residence is concurrently maintained elsewhere does not constitute a principal place of residence within the meaning of section 2 of the act of October 23, 1962, and an application for the conveyance of land based upon such use is properly rejected.

Robert A. and George C. Johnson, A-30951
(Nov. 21, 1968) 75 I. D. 361

MINING OCCUPANCY ACT--Continued

QUALIFIED APPLICANT

In order to demonstrate his qualifications for relief, an applicant for the conveyance of land under the act of Oct. 23, 1962, must show the existence of such facts as will warrant the conclusion that the improvements placed upon a mining claim constitute a principal place of residence for the applicant within the meaning of the act statements that applicants "went into immediate occupancy of the premises" upon their acquisition of property and that they "have continuously occupied the residence as a principal residence" since that time do not constitute statements of the facts necessary for a determination of the applicants' qualifications, especially where it is clear from other statements of the applicants that they do not mean that they have resided continuously on the claim since acquiring it, and an application for the conveyance of land under the act is properly rejected where the applicants decline to furnish details as to the nature and extent of their use of the property after a formal request from the land office for such information.

Eveline and John Anthony Schaefer, A-30901 (May 21, 1968)

In order to determine whether or not an applicant for the conveyance of land under the act of October 23, 1962, is qualified, it is necessary to ascertain the nature and duration of the periods of actual occupancy of a mining claim site; statements that an applicant lived at a mining claim at all times during a three-month period in the summer "when weather, road and topographic conditions permitted" and that such use constituted "actual residency for the purposes of living there throughout said periods" and was not "occasional or casual visits," do not, in the absence of more detailed explanation of the periods of actual occupancy and use of the claim, provide a basis for concluding that the mining claim did, in fact, constitute a principal place of residence for the applicant and that the applicant is qualified under the terms of the act.

Robert L. and Rose Shipley, A-30877 (Apr. 25, 1968)

In order to demonstrate his qualifications for relief, an applicant for the conveyance of land under the act of October 23, 1962, must show the existence of such facts as will warrant the conclusion that the improvements placed upon a mining claim constitute a principal place of residence for the applicant within the meaning of the act; broad statements that applicants have resided on a mining claim site for at least two months of each year, plus vacations and holidays, that the mining claim has been

MINING OCCUPANCY ACT--Continued

QUALIFIED APPLICANT--Continued

the applicants' "only place of residence" in a particular county, and that it has been used only as a "principal place of residence and mining claim" do not constitute statements of the facts sufficient for a determination that the applicants are qualified, especially where the application is filed jointly by two persons who maintain their respective separate residences in a different county from the one in which the mining claim is situated and whose individual residential use of the property is unexplained, where the only evidence of record indicates that use of the property has been casual or intermittent, and where the applicants own statements do not suggest otherwise.

Robert A. and George C. Johnson, A-30951 (Nov. 21, 1968) 75 I. D. 361

MULTIPLE MINERAL DEVELOPMENT ACT

APPLICABILITY

Where a discovery of a valuable mineral deposit within the limits of a mining claim prior to the filing of an oil and gas lease offer covering the land embraced in the claim is not established in a private contest instituted by the claimant for the purpose of determining his right to the leasable minerals, a patent to the mining claim issued after August 13, 1954, must contain a reservation to the United States of all leasing act minerals to the extent required by the act of August 13, 1954.

Marvel Mining Company v. Sinclair Oil and Gas Company et al., United States v. Marvel Mining Company, A-30871 (Dec. 30, 1968) 75 I. D. 407

NATIONAL PARK SERVICE

GENERALLY

The act of March 3, 1921, 41 Stat. 1353, 16 U. S. C. 797a, only restricts the licensing authority of the Federal Power Commission by

NATIONAL PARK SERVICE--Continued

GENERALLY--Continued

precluding the licensing of hydroelectric projects in national parks and monuments. This act does not limit or restrict the authorities available to the Secretary of the Interior to manage and administer areas of the National Park System under the act of August 25, 1916, 39 Stat. 535, as amended and supplemented.

Applicability of the Act of March 3, 1921 (16 U.S.C. 797a), M-36747 (July 11, 1968)

NATIONAL PARK SERVICE AREAS

GENERALLY

Under the provisions of the act of August 25, 1916, 39 Stat. 535, as amended, 16 U.S.C., sec. 3, the Secretary of the Interior is not obligated to renew outstanding grazing permits, does not have the authority to grant an estate or interest in monument lands, and cannot grant an irrevocable permit for the use of monument lands.

If continued grazing within a monument under a revocable grazing permit would result in damage or destruction of the values to be protected and preserved by establishment of the monument, it is an abuse of discretion and therefore illegal to allow such activity to continue.

Legality of Grazing Permits in Organ Pipe Cactus National Monument, M-36734 (Apr. 5, 1968)

NAVIGABLE WATERS

In determining whether a land mass should be considered an accretion to the mainland bordering a navigable river or as islands with accretions thereto, the fact that aerial photographs reveal that in the past at times of high water there were sloughs and channels separating the land

NAVIGABLE WATERS--Continued

from the mainland and also separating portions of the land mass and that there are now finger-like depressions left following the complete recession of waters from the lands which are attached to the mainland completely is not sufficient evidence to find that the formation of the land began as islands rather than as accretion belonging to the mainland.

The portion of accreted land extending from in front of an adjoining landowner's property to and in front of land owned by the United States within the lateral side boundaries of the United States' land belongs to the United States even though originally a slough may have separated the accretion from the mainland of the Government land.

William R. Mills et al., A-30710 (Feb. 28, 1968)

NOTICE

A presumptive heir who did not receive the notice of hearing required by 25 CFR sec. 15.4 in sufficient time to attend the hearing is entitled to a supplemental hearing where the record indicates that the notice was not mailed to her last known place of residence.

Estate of Joe (Joseph) Sherwood, IA-P-10 (May 9, 1968)

A classification of land by Bureau motion for disposition under the Recreation and Public Purposes Act segregates the land from mineral locations even if the classification is not published in newspapers or the Federal Register and is only noted on a land office supplemental plat, and it is proper for the Bureau of Land Management to declare a mining claim null and void ab initio because of the classification.

R. C. Buch, A-30777 (June 4, 1968)
75 I. D. 140

OIL AND GAS LEASES

GENERALLY

An application for a permit to drill a well on the outer continental shelf pursuant to a validated State oil and gas lease is properly rejected when it is determined that in validating the lease under section 6 of the Outer Continental Shelf Lands Act the extent of the lease into the Gulf of Mexico was measured from the shore line of an island and the adjacent mainland, and the site of the proposed well is outside that area. The fact that another line had been adopted by the United States in other litigation to establish "the coast line" for purposes of the Submerged Lands Act does not vary the external boundaries of the lease as validated although it may affect the proportions of Federal and State lands included within those boundaries by changing the location of the State boundary, which separates those areas.

Texaco, Inc., A-30772 (Jan. 24, 1968)
75 I. D. 8

ACQUIRED LANDS LEASES

An acquired lands oil and gas lease offer filed July 1, 1966, is properly rejected as being prematurely filed, where oil and gas rights in the acquired lands were reserved in the grantor "for a primary period ending July 1, 1966," as that provision is interpreted as reserving those rights in the grantor until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

Ethel C. Radzewicz et al., A-30866 (Jan. 29, 1968)

APPLICATIONS

Generally

An acquired lands oil and gas lease offer filed July 1, 1966, is properly rejected as being prematurely filed, where oil and gas rights in the acquired lands were reserved in the grantor "for a primary period ending July 1, 1966," as that provision is interpreted as reserving those

APPLICATIONS--Continued

Generally--Continued

rights in the grantor until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

Ethel C. Radzewicz et al., A-30866 (Jan. 29, 1968)

An offer filed at a time when the land described is open to filing after a simultaneous filing period has ended is not to be rejected because it is determined that the drawing was improperly conducted and a new drawing is to be held open to all without limitation, but the offer will earn priority only after that of the offers participating in the new drawing.

Duncan Miller, A-30891 (Mar. 5, 1968)

One who has held an oil and gas lease which automatically expired for failure to pay annual rental has no preference right to or equities justifying the issuance to him of a new lease.

Duncan Miller, A-30934 (Nov. 22, 1968)

Drawings

An offer filed at a time when the land described is open to filing after a simultaneous filing period has ended is not to be rejected because it is determined that the drawing was improperly conducted and a new drawing is to be held open to all without limitation, but the offer will earn priority only after that of the offers participating in the new drawing.

Duncan Miller, A-30891 (Mar. 5, 1968)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, the applicant and the other interested party are not qualified offerors if they fail to submit a statement showing the extent of their interests in the lease and a copy or explanation of the agreement between them within the time required by the Department's regulation referred to on the card, and the offer is properly rejected even though thereafter they file such information.

Jesse B. Graner et al., A-30899 (Mar. 29, 1968)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where a drawing of oil and gas offers is vacated and a lease issued to the successful offeror is canceled because an offer was improperly excluded from the drawing and the excluded offeror fails to appeal within the proper time from his exclusion, the drawing will be allowed to stand and the lease remain in force.

Esther Bosworth et al., A-30903 (Apr. 1, 1968)

Sole Party in Interest

Where an oil and gas lease offeror's statement of interest and qualifications, addressed to the land office at its post office box address in Santa Fe, New Mexico, was postmarked in Cheyenne, Wyoming, on May 8, 1967, and it is established that in the ordinary course of mail it would have been delivered to the land office at its post office box prior to 4:00 p. m. on the following day, the last hour for the filing of such a statement, but that mail placed in the box after 1:00 p. m. would not have been picked up by the land office until a day later, the statement of interest is presumed to have been filed on May 9 even though the date and time stamp of the land office indicates that it was not received until May 10.

Norma J. Rose, A-30881 (Feb. 19, 1968)
75 I. D. 37

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, the applicant and the other interested party are not qualified offerors if they fail to submit a statement showing the extent of their interests in the lease and a copy of explanation of the agreement between them within the time required by the Department's regulation referred to on the card, and the offer is properly rejected even though thereafter they file such information.

Jesse B. Graner et al., A-30899 (Mar. 29, 1968)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES

A successful bidder for a competitive oil and gas lease of tribal mineral land who refused to complete the lease form and requests a refund of the bonus and rentals deposited, alleging that in preparing his bid he relied upon a U. S. Geological Survey map which erroneously portrayed the geology of the area in which the leasehold was located, must forfeit his deposit as liquidated damages for the use and benefit of the Indian lessor when he did not apprise the United States of the error before his bid was accepted and there was no showing that the Government actually knew or should have known that the bid resulted from a mistake.

It is incumbent upon a bidder for oil and gas leases on Indian lands to investigate and inform himself about the lands. He may assess their mineral potential on the basis of whatever information he chooses to consider.

The principles of equity and fair play do not require that every potential source of error, no matter how remote, be explored by the seller before acceptance of a bid which is fair on its face. They merely require the seller to conduct himself reasonably and to refrain from taking advantage of a bid which contains a palpable error.

Midwest Oil Corporation, IA-615 (Supp.) (Apr. 1, 1968)

A mere statement by a departmental officer at an opening of bids for competitive leases that an unnamed bid is unacceptable because it is unsigned does not of itself constitute a rejection of that bid, binding on the United States.

An opening of bids for competitive leases is simply a public opening and reading of bids which have been submitted. Bids are not ordinarily subject to final acceptance or rejection at that time.

The cashing of a check, which has been submitted in conjunction with a bid for a competitive lease, and the placing of the funds in a suspense account do not in any way constitute an acceptance of the bid.

An unsigned bid for a competitive lease may be accepted when it is accompanied by documentary evidence of the intent to submit the bid.

Union Oil Company Bid on Tract No. 228, Brazos Area, Texas Offshore Sale, M-36733 (June 17, 1968)
75 I. D. 147

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

Where an invitation to submit competitive oil and gas lease bids reserves the right to reject any and all bids even though a bid may be for more than the minimum cash bonus specified, the high bid for a particular tract may properly be rejected for the reason that it is too low without a showing that the bid is inadequate, unreasonable or lacking in good faith, even though it is above the minimum called for by the bid invitation.

Sun Oil Company et al., OCS-G 1711 etc. (July 23, 1968)

DEVELOPMENT CONTRACTS

The performance of actual drilling operations on one lease subject to a development contract will not serve to extend another lease which is subject to the same contract, but which in the absence of production or the performance of actual drilling operations is due to expire.

Effect of Actual Drilling Operations on Leases Subject to a Development Contract, M-36757 (Nov. 4, 1968)

DISCRETION TO LEASE

The Departmental policy against issuing oil and gas leases for lands within a mile of the exterior boundaries of a naval petroleum reserve is an expression of the discretion vested in the Secretary to decide whether or not to issue oil and gas leases.

Robert Kamon et al., A-30732 (Sept. 13, 1968)

DRILLING

The post-termination activities of a lessee who claims to have earned an extension of an oil and gas lease by diligently prosecuting actual drilling operations at the end of its primary term can be evaluated to determine whether his activities on the last day of the lease were undertaken in good faith to carry the well-drilling operations to a conclusion and, where it is determined that he was not proceeding in good faith, it is proper to hold that the lease terminated as of the expiration of the primary term.

Thelma M. Holbrook et al., A-30940 (Sept. 30, 1968) 75 I. D. 329

EXTENSIONS

The post-termination activities of a lessee who claims to have earned an extension of an oil and gas lease by diligently prosecuting actual drilling operations at the end of its primary term can be evaluated to determine whether his activities on the last day of the lease were undertaken in good faith to carry the well-drilling operations to a conclusion and, where it is determined that he was not proceeding in good faith, it is proper to hold that the lease terminated as of the expiration of the primary term.

Thelma M. Holbrook et al., A-30940 (Sept. 30, 1968) 75 I. D. 329

FIRST QUALIFIED APPLICANT

An offer filed at a time when the land described is open to filing after a simultaneous filing period has ended is not to be rejected because it is determined that the drawing was improperly conducted and a new drawing is to be held open to all without limitation, but the offer will earn priority only after that of the offers participating in the new drawing.

Duncan Miller, A-30891 (Mar. 5, 1968)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO

An acquired lands oil and gas lease offer filed July 1, 1966, is properly rejected as being prematurely filed, where oil and gas rights in the acquired lands were reserved in the grantor "for a primary period ending July 1, 1966," as that provision is interpreted as reserving those rights in the grantor until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

Ethel C. Radzewicz et al., A-30866 (Jan. 29, 1968)

Since the Departmental policy expressed in its regulations prohibits the issuance of oil and gas leases for lands within a mile of the exterior boundaries of a naval petroleum reserve except where certain conditions prevail, a lease offer for such lands is properly rejected in the absence of a showing that conditions requisite for leasing exist.

Arden R. Boland, A-30773 (Sept. 12, 1968)

Since the Departmental policy expressed in its regulations prohibits the issuance of oil and gas leases for lands within a mile of the exterior boundaries of a naval petroleum reserve except where certain conditions prevail, a lease offer for such land is properly rejected in the absence of a showing by the offeror that the conditions requisite for leasing exist.

Robert Kamon et al., A-30732 (Sept. 13, 1968)

Lands in an expired lease which have not been properly posted as being available to new simultaneous filings are not available for noncompetitive leases and offers for them are properly rejected.

Duncan Miller, A-30934 (Nov. 22, 1968)

RENTALS

Rentals paid by lessee of Indian allotted land pursuant to 25 CFR 172.16 and the provisions of his oil and gas lease are creditable against the compensatory royalty assessed for the rental period.

Pan American Petroleum Corp., IA-1578 (Feb. 29, 1968)

OIL AND GAS LEASES--Continued

RENTALS--Continued

A successful bidder for a competitive oil and gas lease of tribal mineral land who refused to complete the lease form and requests a refund of the bonus and rentals deposited, alleging that in preparing his bid he relied upon a U.S. Geological Survey map which erroneously portrayed the geology of the area in which the leasehold was located, must forfeit his deposit as liquidated damages for the use and benefit of the Indian lessor when he did not apprise the United States of the error before his bid was accepted and there was no showing that the Government actually knew or should have known that the bid resulted from a mistake.

Midwest Oil Corporation, IA-615 (Supp.) (Apr. 1, 1968)

When a producing oil and gas lease is partially committed to a unit agreement, it is segregated into two leases - one covering the unitized portion and the other the nonunitized portion - and the rental obligations of each lease are those set by the statute, regulation and lease, even though there is no formal notification to the lessee of the segregation and the rentals due on each lease.

When a producing lease is segregated into two leases upon partial commitment to a unit, the nonunitized portion, which does not contain a producing well, does not remain in a minimum royalty status but reverts to a rental basis which is determined by its own situation.

The automatic termination provisions of the Mineral Leasing Act, as amended, do not apply to a lease issued prior to July 24, 1954, unless the lessee consents to have the lease made subject to them, and the consent cannot be made effective as of a date prior to its filing even though rentals have accrued on part of the lease as a result of the segregation of the lease into two leases by unitization by a procedure which the lessee says deprived him of a timely opportunity to prevent the accumulation of several years rental.

Oil and gas lease rentals cannot be reduced or waived under section 39 of the Mineral Leasing Act where such action has no relation to encouraging production or the conservation of natural resources.

Where part of a unitized oil and gas lease is eliminated from a unit agreement it remains part of the unitized lease and the annual rental for that part is $1 per acre if any portion of the lease is within the known geologic structure of a producing oil and gas field.

Where notice that part of a lease is on the known geologic structure of a producing field has been given while the lease was undivided, the fact that it is later segregated into two leases

OIL AND GAS LEASES--Continued

RENTALS--Continued

as a result of unitization does not require that a new notice be given before the increased rental applicable to leases which have lands on a known geologic structure becomes due.

T. Jack Foster, A-30897 (Apr. 2, 1968)
75 I. D. 81

Oil and gas leases are properly declared to be automatically terminated where the rental payments are not received in the proper land office on the anniversary dates of the leases even though they may have been mailed in time to be received on the anniversary dates.

Duncan Miller, A-30966 (Oct. 29, 1968)

ROYALTIES

The term "royalty" as used in 25 CFR 172.16 and standard oil and gas leases of Indian lands encompasses so-called compensatory royalties, that is, payments made to compensate the lessor for loss of royalty resulting from drainage of the leasehold by wells on adjoining land, as well as production.

Rentals paid by lessee of Indian allotted land pursuant to 25 CFR 172.16 and the provisions of his oil and gas lease are creditable against the compensatory royalty assessed for the rental period.

Pan American Petroleum Corp., IA-1578
(Feb. 29, 1968)

When a producing lease is segregated into two leases upon partial commitment to a unit, the nonunitized portion, which does not contain a producing well, does not remain in a minimum royalty status but reverts to a rental basis which is determined by its own situation.

T. Jack Foster, A-30897 (Apr. 2, 1968)
75 I. D. 81

Where a portion of the land in an oil and gas lease lies within the horizontal limits of an oil or gas deposit which was known to be productive on Aug. 8, 1946, the lessee is not entitled under item (1) of section 12 of the act of Aug. 8, 1946, to a flat royalty rate of 12-1/2 percent on production later obtained from deeper zones underlying the same horizontal limits, which deeper

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

zones were discovered by wells drilled outside the lease boundaries subsequent to Aug. 8, 1946.

The United States cannot be deprived of its right to receive all of the royalty payments due under the terms of an oil and gas lease and the applicable statutory provisions by the unauthorized acts of its employees, and the failure of the Geological Survey to collect all the royalty due by tacit acceptance of the lessee's determination of its royalty obligation for 13 years does not waive the right of the United States to receive full royalty payment in accordance with the lease terms or estop it from demanding payment of the balance due under those terms.

Sinclair Oil and Gas Company, A-30709
(June 20, 1968) 75 I. D. 155

TERMINATION

The automatic termination provisions of the Mineral Leasing Act, as amended, do not apply to a lease issued prior to July 24, 1954, unless the lessee consents to have the lease made subject to them, and the consent cannot be made effective as of a date prior to its filing even though rentals have accrued on part of the lease as a result of the segregation of the lease into two leases by unitization by a procedure which the lessee says deprived him of a timely opportunity to prevent the accumulation of several years rental.

T. Jack Foster, A-30897 (Apr. 2, 1968)
75 I. D. 81

Oil and gas leases are properly declared to be automatically terminated where the rental payments are not received in the proper land office on the anniversary dates of the leases even though they may have been mailed in time to be received on the anniversary dates.

Duncan Miller, A-30966 (Oct. 29, 1968)

An appeal from a decision rescinding in part an oil and gas lease offer suspends the effect of the decision and leaves the lease in effect as it was prior to the decision so that the failure of the lessee to pay the full annual rental due on or before the anniversary date of the lease results in the automatic termination of the lease as originally issued.

Duncan Miller, A-30924 (Nov. 13, 1968)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS

When a producing oil and gas lease is partially committed to a unit agreement, it is segregated into two leases - one covering the unitized portion and the other the nonunitized portion - and the rental obligations of each lease are those set by the statute, regulation and lease, even though there is no formal notification to the lessee of the segregation and the rentals due on each lease.

When a producing lease is segregated into two leases upon partial commitment to a unit, the nonunitized portion, which does not contain a producing well, does not remain in a minimum royalty status but reverts to a rental basis which is determined by its own situation.

Where part of a unitized oil and gas lease is eliminated from a unit agreement it remains part of the unitized lease and the annual rental for that part is $1 per acre if any portion of the lease is within the known geologic structure of a producing oil and gas field.

Where notice that part of a lease is on the known geologic structure of a producing field has been given while the lease was undivided, the fact that it is later segregated into two leases as a result of unitization does not require that a new notice be given before the increased rental applicable to leases which have lands on a known geologic structure becomes due.

T. Jack Foster, A-30897 (Apr. 2, 1968)
75 I. D. 81

When a portion of a lease is contracted out of a unit on which there is production and thereafter committed to a second unit and segregated, the term of the portion contracted out and subsequently segregated upon commitment to a second unit is the same as the term of the base lease from which it is derived; when the base lease is continued for the life of production within the first unit, the segregated lease will continue for the same period.

Whether the Non-Producing Portion of a Lease Subsequently Committed to a Unit is in an Extended Term Because of Constructive Production on the Base Lease Which was Previously Committed to a Producing Unit, M-36758 (Oct. 25, 1968)

OIL SHALE

MINING CLAIMS

Mining claims located on lands known to be valuable for minerals subject to disposition under the Mineral Leasing Act convey no rights to Leasing Act minerals since those minerals are reserved to the United States by virtue of section 4 of the Multiple Mineral Development Act.

The Multiple Mineral Development Act, though allowing the location of mining claims on lands known to be valuable for Leasing Act minerals, did not authorize the location of claims for minerals whose mining or extraction would significantly damage or disturbed Leasing Act minerals such as oil shale or sodium.

Mining Claims--Rights to Leasable Minerals, M-36764. 4357 (Dec. 4, 1968) 75 I. D. 397

OUTER CONTINENTAL SHELF LANDS ACT
(See also Oil and Gas Leases)

BOUNDARIES

An application for a permit to drill a well on the outer continental shelf pursuant to a validated State oil and gas lease is properly rejected when it is determined that in validating the lease under section 6 of the Outer Continental Shelf Lands Act the extent of the lease into the Gulf of Mexico was measured from the shore line of an island and the adjacent mainland, and the site of the proposed well is outside that area. The fact that another line had been adopted by the United States in other litigation to establish "the coast line" for purposes of the Submerged Lands Act does not vary the external boundaries of the lease as validated although it may affect the proportions of Federal and State lands included within those boundaries by changing the location of the State boundary, which separates those areas.

Texaco, Inc., A-30772 (Jan. 24, 1968)
75 I. D. 8

OUTER CONTINENTAL SHELF LANDS ACT
--Continued

OIL AND GAS LEASES

A mere statement by a departmental officer at an opening of bids for competitive leases that an unnamed bid is unacceptable because it is unsigned does not of itself constitute a rejection of that bid, binding on the United States.

An opening of bids for competitive leases is simply a public opening and reading of bids which have been submitted. Bids are not ordinarily subject to final acceptance or rejection at that time..

The cashing of a check, which has been submitted in conjunction with a bid for a competitive lease, and the placing of the funds in a suspense account do not in any way constitute an acceptance of the bid.

An unsigned bid for a competitive lease may be accepted when it is accompanied by documentary evidence of the intent to submit the bid.

Union Oil Company Bid on Tract No. 228, Brazos Area, Texas Offshore Sale, M-36733 (June 17, 1968) 75 I. D. 147

Where an invitation to submit competitive oil and gas lease bids reserves the right to reject any and all bids even though a bid may be for more than the minimum cash bonus specified, the high bid for a particular tract may properly be rejected for the reason that it is too low without a showing that the bid is inadequate, unreasonable or lacking in good faith, even though it is above the minimum called for by the bid invitation.

Sun Oil Company et al., OCS-G 1711 etc. (July 23, 1968)

STATE LEASES

Generally

An application for a permit to drill a well on the outer continental shelf pursuant to a validated State oil and gas lease is properly rejected when it is determined that in validating the lease under section 6 of the Outer Continental Shelf Lands Act the extent of the lease into the Gulf of Mexico was measured from the shore line of an island and the adjacent mainland, and the site of the proposed well is outside that area. The fact that another line had been adopted by the United States in other litigation to establish "the coast line" for purposes of the Submerged Lands Act does not vary the external boundaries of the lease as validated although it may affect

OUTER CONTINENTAL SHELF LANDS ACT
--Continued

STATE LEASES--Continued

Generally--Continued

the proportions of Federal and State lands included within those boundaries by changing the location of the State boundary, which separates those areas.

Texaco, Inc., A-30772 (Jan. 24, 1968) 75 I. D. 8

PATENTS OF PUBLIC LANDS

GENERALLY

Where, subsequent to the issuance of patent to sec. 33, T. 28 S., R. 34 E., a resurvey was made which resulted in a determination that the area so patented lay within the limits of a different township and in the designation of a different area as sec. 33, T. 28 S., R. 34 E., and where the jurisdiction of the United States over a part of the land now designated as section 33 is challenged on the premise that the title to the area in question passed from the United States by virtue of the patent, the lack of jurisdiction over the land can be demonstrated only by showing that the disputed area is within the limits of the original section 33 as it was surveyed on the ground, and any showing of error in either the original plat of survey or the plat of resurvey is immaterial if it fails to establish that fact.

A patentee of public land takes according to the actual survey on the ground, even though the official survey plat may not show the tract as it is located on the ground, and the Federal Government is without power to affect, by means of any subsequent survey, the property rights acquired under an official survey.

United States v. Sidney M. and Esther M. Heyser, A-30810 (Jan. 24, 1968) 75 I. D. 14

A resurvey of public land by the United States cannot alter or change property rights of private persons which have become vested and fixed by virtue of patents issued by the United States.

Rubicon Properties, Inc. et al., A-30748 (May 6, 1968)

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS

Where a discovery of a valuable mineral deposit within the limits of a mining claim prior to the filing of an oil and gas lease offer covering the land embraced in the claim is not established in a private contest instituted by the claimant for the purpose of determining his right to the leasable minerals, a patent to the mining claim issued after August 13, 1954, must contain a reservation to the United States of all leasing act minerals to the extent required by the act of August 13, 1954.

Marvel Mining Company v. Sinclair Oil and Gas Company et al., United States v. Marvel Mining Company, A-30871 (Dec. 30, 1968) 75 I. D. 407

PHOSPHATE LEASES AND PERMITS

PERMITS

Where an application for a phosphate prospecting permit has been rejected as to a tract of land on the ground that it is underlain by a workable phosphate deposit, the rejection will be set aside where further study shows there is serious doubt as to the workability and even existence of a phosphate deposit in the tract.

J. D. Archer, Elizabeth B. Archer, A-30721 (Jan. 5, 1968)

Applications for phosphate prospecting permits are properly rejected in part when information is available as to those lands from which the existence and workability of the phosphate deposits can be determined; it is not necessary that the information specifically describe the phosphate deposits in the lands applied for, where detailed information is available regarding the existence of workable deposit in adjacent lands and geologic and other surrounding external conditions from which the workability of the deposits in the lands applied for can be reasonably inferred.

Where applications for phosphate prospecting permits have been rejected in their entirety upon the basis of reports of the Geological Survey, and the Survey upon further consideration determines that prospecting is necessary to determine the workability of the phosphate

PHOSPHATE LEASES AND PERMITS--Continued

PERMITS--Continued

deposits in part of the lands applied for, the applications will be allowed for those lands.

American Nuclear Corporation, A-30808 (Mar. 5, 1968)

An application for phosphate prospecting permit is properly rejected when information is available from which the existence and workability of the phosphate deposit in the lands in question can be determined; it is not necessary to a determination of workability that the available information supports a conclusion that a mining operation will be an economic success.

J. D. Archer, A-30886 (Mar. 21, 1968)

Where a phosphate prospecting permit application has been rejected as to part of the lands applied for upon the basis of reports of the Geological Survey, and the Survey determines upon further consideration that prospecting is necessary to determine the workability of the phosphate deposits in part of the rejected lands, the application will be allowed for those lands.

William J. Colman, A-30516 (Supp.) (Sept. 16, 1968)

An application for a phosphate prospecting permit is properly rejected where it appears that the geology of the land applied for is a continuation of, and very similar to, that found on contiguous land included in a phosphate lease which is definitely known to contain valuable deposits of phosphate.

J. D. Archer, A-30668 (Oct. 2, 1968)

The partial rejection of an application for a phosphate prospecting permit will be reversed in part where a reexamination of the land by the Geological Survey shows that prospecting is warranted in a portion of the land.

J. D. Archer, A-30707 (Oct. 8, 1968)

POTASSIUM LEASES AND PERMITS

PERMITS

An application for a prospecting permit filed at a time when the land it covers is in an outstanding prospecting permit must be rejected whether or not the outstanding permit was properly extended since land in an outstanding permit is not available for similar disposition to others.

Lithium Corporation of America, George W. Abbott, A-30898 (Mar. 29, 1968)

POWER

GENERALLY

The authority of the Alaska Power Administration to engage in general investigations and planning and resource studies pursuant to Secretarial Order No. 2900 derives from several separate but overlapping statutory authorizations, including section 5 of the Flood Control Act of 1944 (16 U.S.C. sec. 825s), the Act of August 9, 1955 (69 Stat. 618), and statutory authorities of the Department respecting investigations relating to projects for the development and utilization of water, power and related resources in Alaska, such as the Public Land Administration Act of 1961 (43 U.S.C. sec. 1362). The appropriations limitation in the 1955 Act does not apply to study and planning activities justified under other laws.

Alaska Power Administration Planning and Study Authority, M-36727 (Mar. 27, 1968)

PURCHASE OF FOR RESALE

In implementing an integrated hydro-thermal power program for the Pacific Northwest, the Bonneville Power Administrator may enter into contractual arrangements, including the acquisition by purchase or exchange of thermal power, which are reasonably related to the statutory objective of providing the most widespread use of and benefit from the existing and authorized Federal power investment at the lowest practical cost.

Bonneville Power Administration Hydro-Thermal Power Program, M-36769 (Dec. 18, 1968) 75 I. D. 403

PUBLIC LANDS

(See also Accretion, Boundaries, Reliction, and Surveys of Public Lands)

GENERALLY

Withdrawn public domain lands cannot become "surplus" until after determination by the Secretary of the Interior that the lands are not suitable for return to the public domain.

Proposed Sale of Withdrawn Land By the Corps of Engineers, M-36749 (Aug. 21, 1968) 75 I. D. 245

CLASSIFICATION

A classification of land by Bureau motion for disposition under the Recreation and Public Purposes Act segregates the land from mineral locations even if the classification is not published in newspapers or the Federal Register and is only noted on a land office supplemental plat, and it is proper for the Bureau of Land Management to declare a mining claim null and void ab initio because of the classification.

Although the Recreation and Public Purposes Act and regulations thereunder provide in effect that if no application is filed for lands classified on Bureau motion for disposition under that act within 18 months from the classification then the Secretary shall restore the land for appropriation under other public land laws, such a provision is not self-executing and the lands remain segregated from mineral location after the 18-month period where no action has been taken to restore the lands to appropriation under the mining laws.

R. C. Buch, A-30777 (June 4, 1968) 75 I. D. 140

RIPARIAN RIGHTS

In determining whether a land mass should be considered an accretion to the mainland bordering a navigable river or as islands with accretions thereto, the fact that aerial photographs reveal that in the past at times of high water there were sloughs and channels separating the land from the mainland and also separating portions of the land mass and that there are now finger-like depressions left following the complete recession of waters from the lands which are attached to the mainland completely is not

PUBLIC LANDS--Continued

RIPARIAN RIGHTS--Continued

sufficient evidence to find that the formation of the land began as islands rather than as accretion belonging to the mainland.

The portion of accreted land extending from in front of an adjoining landowner's property to and in front of land owned by the United States within the lateral side boundaries of the United States' land belongs to the United States even though originally a slough may have separated the accretion from the mainland of the Government land.

William R. Mills et al., A-30710 (Feb. 28, 1968)

PUBLIC RECORDS

Where a person desiring to inspect Departmental records does not follow the procedure set up in the applicable regulation, he cannot later complain that he has been denied access to them.

C. V. Armstrong et al., A-30889 (Feb. 28, 1968)

Robert Kamon et al., A-30732 (Sept. 13, 1968)

PUBLIC SALES

AWARD OF LANDS

Where two separate tracts of land are offered at public sale and two applicants assert preference rights to purchase the lands, one showing ownership of land contiguous to both tracts and the other showing ownership of land contiguous to only one of the tracts, the principles governing the awarding of lands offered at public sale between competing preference-right claimants

PUBLIC SALES--Continued

AWARD OF LANDS--Continued

are applicable only in determining the disposition of the tract to which both applicants asserts a preference right.

Where a land office awards a tract of land offered at public sale to one of two competing preference-right claimants, and the award may have been made on a mistaken assumption as to the controlling factors, the case will be remanded to the land office for a determination of the proper disposition of the land in accordance with the controlling principles set forth in the Department's regulations.

Bountiful Livestock Company, Arthur J. Barker, A-30878 (Feb. 21, 1968)

PREFERENCE RIGHTS

Where two separate tracts of land are offered at public sale and two applicants assert preference rights to purchase the lands, one showing ownership of land contiguous to both tracts and the other showing ownership of land contiguous to only one of the tracts, the principles governing the awarding of lands offered at public sale between competing preference-right claimants are applicable only in determining the disposition of the tract to which both applicants asserts a preference right.

Where a land office awards a tract of land offered at public sale to one of two competing preference-right claimants, and the award may have been made on a mistaken assumption as to the controlling factors, the case will be remanded to the land office for a determination of the proper disposition of the land in accordance with the controlling principles set forth in the Department's regulations.

Bountiful Livestock Company, Arthur J. Barker, A-30878 (Feb. 21, 1968)

RECREATION AND PUBLIC PURPOSES ACT

Lands classified for disposition under and leased pursuant to the Recreation and Public Purposes Act are not subject to mining locations and mining claims located on such lands are properly held null and void ab initio.

No hearing is necessary prior to the classification by the Department of land as suitable for disposal under the Recreation and Public Purposes Act.

C. V. Armstrong et al., A-30889 (Feb. 28, 1968)

A classification of land by Bureau motion for disposition under the Recreation and Public Purposes Act segregates the land from mineral locations even if the classification is not published in newspapers or the Federal Register and is only noted on a land office supplemental plat, and it is proper for the Bureau of Land Management to declare a mining claim null and void ab initio because of the classification.

Although the Recreation and Public Purposes Act and regulations thereunder provide in effect that if no application is filed for lands classified on Bureau motion for disposition under that act within 18 months from the classification then the Secretary shall restore the land for appropriation under other public land laws, such a provision is not self-executing and the lands remain segregated from mineral location after the 18-month period where no action has been taken to restore the lands to appropriation under the mining laws.

R. C. Buch, A-30777 (June 4, 1968)
75 I. D. 140

REGULATIONS
(See also Administrative Procedure Act)
APPLICABILITY

A regulation issued under the Federal Claims Collection Act of 1966 authorizes referral to the Department of Justice for litigation of claims amounting to less than $250 where a debtor is able to pay and the Government can effectively enforce payment, as it presumably can where a statutory lien against project lands is retained by the United States as security for the payment

REGULATIONS--Continued

APPLICABILITY--Continued

of operation and maintenance charges of Indian water and power projects.

Applicability of the Federal Claims Collection Act of 1966 (80 Stat. 308) To Delinquent Operation and Maintenance Charges, Indian Irrigation and Power Projects, M-36724 (Jan. 17, 1968)

Where an amendment to a Departmental regulation would authorize relief to a purchaser under a timber sales contract from a rigid requirement imposed by the terms of the contract and the regulations in effect at the date of execution of the contract that payment in full of the contract purchase price be made prior to the expiration date of the contract as a condition to the granting of an extension of time for the cutting and removal of timber, the benefit of the amended regulation may be extended to the purchaser if it does not adversely affect the rights of others and is not detrimental to the interests of the United States.

Forrest Industries, Inc., A-31001 (July 30, 1968)

RELICTION

Former lakebed lands left dry by the gradual recession of water belong to the owner of the adjoining upland and where such relicted land was formed by the gradual recession of Walker Lake along upland which is part of the Walker River Indian Reservation, the relicted lakebed belongs to the Paiute Indians of the Walker River Reservation by operation of law.

Relicted Lakebed Lands Adjoining Walker River Indian Reservation, Nevada, M-36736 (Apr. 9, 1968)

RIGHTS-OF-WAY

(See also Indian Lands, and Outer Continental Shelf Lands Act)

GENERALLY

Where a regulation provides that the rates charged for a right-of-way across Government lands may be revised only after notice and an opportunity for hearing, it is improper to increase the rates without following the prescribed procedure.

Where a regulation provides that rates charged for rights-of-way across Government lands may be revised only after notice and an opportunity for hearing, the hearing ought to be held before the rate is issued, but if the procedure is not followed, a hearing in compliance with the regulation may be held after the first rate determination is set aside.

A requirement that a hearing be held before an action may be taken is satisfied even though an official other than the one who conducts the hearing makes the decision.

The determination of whether to hold a hearing on an issue of fact before a field commissioner abides in the discretion of the Director of the Bureau of Land Management and an appellant from a land office decision fixing or revising a rate charge for a right-of-way over Government lands is not entitled to one as a matter of right, but the Director (or Secretary) may order that one be held if he deems it advisable. Such a hearing will be ordered where it is proposed to change a charge for a revocable right-of-way across wildlife refuge lands from an annual rental to a lump-sum charge and there is sharp controversy as to the basis for determining the lump-sum payment.

Transcontinental Gas Pipe Line Corporation et al., A-30622 (Jan. 29, 1968)

A nonprofit organization that furnishes radio service to members that use the service as an integral part of their regular profit-seeking operations and as a substitute for services they would otherwise have to provide less economically themselves would not be using a right-of-way allowed it for radio transmission facilities exclusively for a nonprofit and is not entitled to use of the site without charge; however, the charge to be imposed may reflect the extent of the physical use of the right-of-way and the value of the operation as a part of a distress and emergency service communications system.

Southern Oregon Timber Industries Association, A-30815 (Mar. 26, 1968)

RULES OF PRACTICE

GENERALLY

Where a hearing examiner orders the taking of a mineral sample jointly by the Government and the mining claimant in a mining contest as a means of reconciling conflicting testimony and instructs the parties to obtain and have submitted to him separate assay reports on the sampling, and where the mining claimant fails to submit any report pursuant to the hearing examiner's instructions, the mining claimant's charge, made after the issuance of the hearing examiner's decision, that the Government's mineral examiner failed to sample properly is untimely and is entitled to no consideration.

United States v. David L. King, A-30867 (Feb. 28, 1968)

The principles of res judicata and equitable estoppel do not ordinarily apply to decisions entered in administrative proceedings.

Estate of Joseph Petsemoie, IA-T-12 (May 20, 1968)

Where a State applies for land under the provisions of the Swamp Land Act, and after hearing the examiner holds that certain lands are subject to grant under the act, and where, after the decision of the hearing examiner is appealed by the Regional Solicitor on behalf of the State Director, Bureau of Land Management, an Indian Tribe files a petition to intervene in the proceeding, the petition will be granted where the Tribe demonstrates that it has an interest in the outcome of the proceeding.

Where a State applies for land under the provisions of the Swamp Land Act, and after hearing the examiner holds that certain lands are subject to grant under the act, and where, after the decision of the hearing examiner is appealed by the Regional Solicitor on behalf of the State Director, Bureau of Land Management, the Bureau of Indian Affairs files a petition to intervene for itself and on behalf of an Indian Tribe, the petition will be denied, since all bureaus and agencies of the Department are represented in adjudicative proceeding within the Department by the Office of the Solicitor and are not permitted to independently participate.

In the Matter of Land Classification State of California, Applicant, A-31022 (Aug. 14, 1968)

RULES OF PRACTICE--Continued

GENERALLY--Continued

A claim against the estate of a deceased Indian filed after the conclusion of the hearing must be disallowed where the claimant fails to allege or otherwise indicate to the Examiner that satisfactory proof can be furnished that the claimant did not have actual notice of the hearing and that the claimant was not on the reservation or in the vicinity during the period when public notice thereof was posted.

A claim against the estate of a deceased Indian, filed by a bank subsequent to a hearing conducted pursuant to a notice thereof which had, for twenty days before the date of hearing, been posted in the U. S. Post Office of the city in which the bank is located and doing business, should be disallowed pursuant to 25 CFR 15.23 (e) as not being timely filed.

Estate of Marion Ahdosy, IA-T-17 (Aug. 22, 1968)

The Secretary of the Interior may inquire into all matters vital to the validity or regularity of a mining claim at any time before the passage of legal title, and the fact that the validity of a portion of a contested mining claim was not challenged in a proceeding initiated by the Forest Service does not preclude inquiry into the validity of that portion of the claim by this Department if, upon review of the record of the contest proceedings, the Department is not satisfied that the claim is regular in all respects.

Where the validity of a portion of a contested placer mining claim located on land subsequently withdrawn from mining location is dependent upon a finding that, at the effective date of the withdrawal, the land was known to be mineral in character, but the contest complaint made no reference to the date of the determination of mineral character, and no evidence was introduced by either party to the contest bearing upon known conditions at the time of the withdrawal which related to the mineral character of the land, and where there is reason for doubting whether the allegations of the complaint accurately reflected the charges which the contestant proposed to substantiate, the proceeding will be set aside to permit the filing of a new complaint or amended complaint.

United States v. Clare Williamson, A-30640 (Oct. 23, 1968) 75 I. D. 338

The Secretary of the Interior may inquire into all matters vital to the validity or regularity of a mining claim at any time before the passage of legal title, and the failure of the Government to contest a mining claim after its mineral examiner has examined the claim in response to an application for patent and has recommended that the claim not be contested is not a bar to

RULES OF PRACTICE--Continued

GENERALLY--Continued

further inquiry into the validity of the claim if, upon further review of the case, it appears that there has not been a discovery.

Marvel Mining Company v. Sinclair Oil and Gas Company et al., United States v. Marvel Mining Company, A-30871 (Dec. 30, 1968) 75 I. D. 407

APPEALS

Generally

Where in its request for reconsideration the appellant asserts that the Board's finding that no change, actual or constructive, had occurred, as a result of delay in deliveries of Government-furnished steel, is unsupported by any substantial evidence, but fails to show that the indicia of change test had been incorrectly applied, the decision denying the appeal is affirmed.

Appeal of Mark W. Chisum Corporation, IBCA-540-1-66 (Feb. 20, 1968)

A request for reconsideration of a Board decision and for a hearing was denied: (i) where it was based upon the appellant's erroneous conclusion that a statement in support of the appeal was not before the Board at the time the decision was rendered (ii) where no request for a hearing was made during a period of more than six months between the docketing of the appeal and issuance of the decision; and (iii) where there was no indication that newly discovered evidence or other proper grounds for reconsideration were involved.

Appeal of William F. Klingensmith, Inc., IBCA-669-9-67 (June 26, 1968)

Although deference is usually given to findings of fact by hearing examiners because of their opportunity to observe the demeanor of witnesses, etc., reviewing officers have the authority to make all findings of fact based on the record as though they were making the initial decision in the case and they are fully as capable of making findings of fact as the examiner where the evidence is clear and uncontroverted.

United States v. Alvin M. May, A-30675 (July 25, 1968)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Claims of privilege by the Government as to certain documents which an appellant has moved to add to the appeal file, on the ground that they are items of advice and counsel relied on by the contracting officer in making his findings of fact, will be examined on an ad hoc basis; accordingly, where an appellant has so moved in order to determine if the contracting officer acted independently and otherwise in accordance with the duties and obligations imposed upon him, he is entitled to be furnished copies of such documents that are relevant, but since they essentially duplicate existing material in the appeal file, they will not be incorporated therein.

Appeal of Allison & Haney, Inc., IBCA-587-9-66 (Sept. 13, 1968)

An appeal from an order of the Superintendent, Osage Agency, Bureau of Indian Affairs, denying a request for rehearing after approval of the will of an Osage Indian, is not a "complaint" within the provisions of 25 CFR 2.1(e).

Estate of Ellen Fitzpatrick, IA-T-5 (Supp.) (Nov. 5, 1968)

Burden of Proof

In a case submitted on the record involving a termination for default of a contract for planting trees on the basis of failure to make satisfactory progress, the Board finds that the Government has failed to establish a lack of progress to the extent necessary to justify a termination for default, noting, inter alia, an unexplained delay of 48 days in issuing the notice to proceed that could have materially contributed to the contractor's difficulties in performing the contract.

Appeal of Robert Hart, IBCA-659-8-67 (Apr. 10, 1968)

Where as a result of investigation of a complaint filed with the Department of Labor the contracting officer found that one of the appellant's employees had been underpaid and where the appellant contested such finding but failed to offer any evidence in support of the allegations made, the Board sustains the findings of the contracting officer as modified by a Government stipulation respecting the labor rate to be

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

applied for services rendered as a tractor operator.

Appeal of Arvid E. Keith, IBCA-657-7-67 (Apr. 30, 1968)

A party who challenges the Bureau of Land Management's determination of grazing qualifications of others or of itself where temporary licenses had previously been issued has the burden of proof at a hearing to be held on an appeal from the determination to show that the Bureau's determination was erroneous.

Porter Estate Company, A-30817 (Dec. 2, 1968)

Dismissal

An appeal to the Secretary by applicants for prospecting permits whose applications have been rejected as to certain land will be dismissed to the extent that they withdraw the land in issue from their applications.

J.D. Archer, Elizabeth B. Archer, A-30721 (Jan. 5, 1968)

Where delay by the Government in furnishing drawings under a contract for the construction and completion of earthwork, pipelines and structures required a contractor to reschedule its operations, an appeal seeking reimbursement for the expense resulting from such delay will be dismissed without a hearing as being outside the Board's jurisdiction in the absence of a Suspension of Work clause or a similar provision, the Changes clause being inapplicable to such a claim.

Appeal of Allison and Haney, Inc., IBCA-642-5-67 (Feb. 7, 1968)

A claim for additional compensation based on a delay by the Government in furnishing an outage (a period when a transmission line is deenergized) will be dismissed as outside the jurisdiction of the Board where the contract contains no "pay-for-delay" type clause.

Appeal of James Knox, dba Jak Enterprises, IBCA-684-11-67 (Feb. 13, 1968)

APPEALS--Continued

Dismissal--Continued

An appeal to the Secretary of the Interior will be dismissed when the appellant withdraws the application that was the subject of the appeal.

Harold E. Jensen, A-30964 (Apr. 17, 1968)

An appeal to the Secretary of the Interior will be dismissed when the appellant withdraws the appeal.

Gulf Oil Corporation, A-30959 (May 16, 1968)

Delmarva Power & Light Company, A-31007 (July 19, 1968)

An appeal to the Secretary of the Interior will be dismissed when the appellant files an abandonment of the appeal.

Kaiser Cement & Gypsum Corporation, A-30671 (May 16, 1968)

The Board denies the Government's motion to dismiss an appeal as beyond the purview of its jurisdiction where it finds: (i) that a delay of approximately 30 days in supplying a contractor with Government-furnished steel had no significant impact upon the overall performance of the contract; and (ii) that the Government's action in furnishing large quantities of misfabricated steel not only disrupted the contractor's assembly and erection program as had been recognized by the contracting officer in a proposed amendment to the contract but on a rather short schedule job necessarily disrupted the succeeding program of conductor stringing as well, with the result that the costs shown to be attributable to the Government's action were found in both instances to stem from a constructive change.

Appeal of Power City Construction & Equipment, Inc., IBCA-490-4-65 (July 17, 1968) 75 I. D. 185

Where a contract for the construction of a road required a contractor to "observe and comply with all Federal, State and local laws," but did not specifically provide for compliance with the Fair Labor Standards Act, and the contractor was ordered by the U. S. Labor Department to pay overtime wages under the FLSA, a claim by the contractor for reimbursement of such overtime wages paid, grounded upon an alleged misrepresentation by the procuring agency of the applicability of the FLSA to the

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

work will be dismissed as outside the jurisdiction of the Board.

Appeal of James Hamilton Construction Company and Hamilton's Equipment Rentals, Inc., IBCA-493-5-65 (July 18, 1968) 75 I. D. 207

An appeal to the Secretary of the Interior will be dismissed where the appellants did not serve a copy of their notice of appeal on the adverse party within the time fixed by the regulations on appeals.

United States v. John C. Looney et al., A-31009 (July 23, 1968)

The Board denies a Government action to dismiss an appeal as involving a claim not cognizable under the contract where, for reasons detailed in an earlier opinion in the same case, the Board finds that the actions of the Government's Supervisory Engineer--in assuming direction and control of the work and restricting the contractor's operations is a wholly unwarranted way--constituted a constructive change for which the appellant is entitled to be reimbursed to the extent it shows that the costs claimed are the natural and direct result of the Government's actions.

Appeal of Richey Construction Company, IBCA-700-2-68 (Aug. 5, 1968)

A construction contractor's claim for extra compensation for stand-by costs, alleged interference and inefficient work production based on alleged changed conditions created by a labor dispute engendered by third persons causing a work stoppage, will be dismissed for want of jurisdiction on the Government's motion as being a claim for administrative relief not cognizable under the Changed Conditions clause of Standard Form 23A or any other provision of the contract. Contractor's associated claims for time extensions are found, however, to be within the jurisdiction of the Board.

Appeal of Bateson-Cheves Construction Company, IBCA-670-9-67 (Aug. 12, 1968)

The request of an appellant to dismiss an Indian probate appeal, contingent on the payment of trust funds from the account of the appellee, may be granted when accompanied by an agreement providing for such payment, executed by

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

the appellant and appellee, which has been approved by the officer to whom the Secretary has delegated authority to approve the intervivos transfer of such funds.

Estate of William Bearshead, IA-T-6 (Sept. 30, 1968)

A decision dismissing for lack of jurisdiction a construction contractor's claim, resulting from a work stoppage arising out of a labor dispute between the contractor and a third party, because the claim is not cognizable under any provision of the contract, will be affirmed upon reconsideration, without a hearing, since the scheduling of a hearing would serve no useful purpose in the absence of a showing of newly-discovered evidence or other basis upon which to hold the Government responsible for the acts of the third party.

Appeal of Bateson-Cheves Construction Company, IBCA-670-9-67 (Oct. 8, 1968)

In a case where a contractor's claim for constructive change based upon practical impossibility had not been presented to the contracting officer prior to the filing of the notice of appeal, the Board denies a Government motion to dismiss such claim on the ground that in the circumstances presented a stay of proceedings pending the issuance of a finding and the taking of a timely appeal therefrom would facilitate the orderly presentation and consideration of the claims involved in the appeal. The Board also denies a Government motion to dismiss portions of the appeal on the ground of lack of specificity in the notice of appeal where it finds sufficient information in the record to apprise the Government of the essential allegations of the appellant's case and thereby permit the Government to adequately prepare its case for hearing.

Where there are fact questions common to the contractor's claims of excusable delay and practical impossibility on the one hand and the Government's claim of common law damages for late delivery on the other, the Board concludes that it will retain jurisdiction over the latter claim pending the development of a complete administrative record without prejudice, however, to the Government's right to file a motion to dismiss the claim for common law damages at the time its post-hearing brief is submitted.

Appeal of McGraw Edison Company, IBCA-699-2-68 (Oct. 28, 1968) 75 I. D. 350

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of

When an administrative decision is reversed on appeal, all orders dependent thereon fall with its reversal.

Estate of Joseph Petsemoie, IA-T-12 (May 20, 1968)

An appeal from a decision rescinding in part an oil and gas lease offer suspends the effect of the decision and leaves the lease in effect as it was prior to the decision so that the failure of the lessee to pay the full annual rental due on or before the anniversary date of the lease results in the automatic termination of the lease as originally issued.

Duncan Miller, A-30924 (Nov. 13, 1968)

Extensions of Time

The Department's regulations on appeals prohibit the granting of an extension of time for filing a notice of appeal to the Director, Bureau of Land Management, and an appeal to the Director is properly dismissed where the notice of appeal was not filed within the 30-day period allowed for such filing but was filed within an extension of time granted by the land office.

Chris A. Corondoni, A-30952 (Apr. 19, 1968)

The denial of a request for an extension of time to file a statement of reasons in support of an appeal and the consequent dismissal of the appeal for failure to file the statement timely will be set aside where, in the circumstances of the case, the denial appears to be unduly severe.

J. D. Archer, A-30935 (Apr. 25, 1968)

RULES OF PRACTICE--Continued

APPEALS--Continued

Failure to Appeal

Where a drawing of oil and gas offers is vacated and a lease issued to the successful offeror is canceled because an offer was improperly excluded from the drawing and the excluded offeror fails to appeal within the proper time from his exclusion, the drawing will be allowed to stand and the lease remain in force.

Esther Bosworth et al., A-30903 (Apr. 1, 1968)

Hearings

Where delay by the Government in furnishing drawings under a contract for the construction and completion of earthwork, pipelines and structures required a contractor to reschedule its operations, an appeal seeking reimbursement for the expense resulting from such delay will be dismissed without a hearing as being outside the Board's jurisdiction in the absence of a Suspension of Work clause or a similar provision, the Changes clause being inapplicable to such a claim.

Appeal of Allison and Haney, Inc., IBCA-642-5-67 (Feb. 7, 1963)

The record made at a hearing in a governnrent contest must be the sole basis for decision under the Department's rules of practice; therefore, assertions submitted on appeal of an evidentiary nature may be considered only to determine if there should be a new hearing.

United States v. Arch Little and Ethelyn Little, A-30842 (Feb. 21, 1968)

A request for reconsideration of a Board decision and for a hearing was denied: (i) where it was based upon the appellant's erroneous conclusion that a statement in support of the appeal was not before the Board at the time the decision was rendered (ii) where no request for a hearing was made during a period of more than six months between the docketing of the appeal and issuance of the decision; and (iii) where there was no indication that newly discovered evidence or other proper grounds for reconsideration were involved.

Appeal of William F. Klingensmith, Inc., IBCA-669-9-67 (June 26, 1968)

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

A decision dismissing for lack of jurisdiction a construction contractor's claim, resulting from a work stoppage arising out of a labor dispute between the contractor and a third party, because the claim is not cognizable under any provision of the contract, will be affirmed upon reconsideration, without a hearing, since the scheduling of a hearing would serve no useful purpose in the absence of a showing of newly discovered evidence or other basis upon which to hold the Government responsible for the acts of the third party.

Appeal of Bateson-Cheves Construction Company, IBCA-670-9-67 (Oct. 8, 1968)

Noting the general rule that counsel representing litigants should not be called as witnesses in trials involving those litigants if such testimony can be avoided consonant with obtaining justice, the Board finds that the testimony of a Government witness who also participated in presenting the Government's case at the hearing should be treated as oral argument. Preparation by the same counsel of one of the findings of fact was not found to be a violation of the provisions of the Wunderlich Act where there was no showing that the decisions reflected in such findings were other than those of the contracting officer and where the Board noted (i) the absence of a request for a remand to the contracting officer, and (ii) the fact that in the circumstances of the particular case a remand would apparently serve no useful purpose.

Appeals of American Cement Corporation, IBCA-496-5-65 and IBCA-578-7-66 (Dec. 2, 1968) 75 I.D. 378

Notice of Appeal

The Department's regulations on appeals prohibit the granting of an extension of time for filing a notice of appeal to the Director, Bureau of Land Management, and an appeal to the Director is properly dismissed where the notice of appeal was not filed within the 30-day period allowed for such filing but was filed within an extension of time granted by the land office.

Chris A. Corondoni, A-30952 (Apr. 19, 1968)

RULES OF PRACTICE--Continued

APPEALS--Continued

Service on Adverse Party

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant fails to serve a copy of his notice of appeal upon the adverse party; he cannot be excused merely because he had a short stay in the country since he had the obligation of appointing someone to act for him if he could not handle the appeal personally.

United States v. Jerry Jensen, A-30956 (Apr. 22, 1968)

An appeal to the Secretary of the Interior will be dismissed where the appellants did not serve a copy of their notice of appeal on the adverse party within the time fixed by the regulations on appeals.

United States v. John C. Looney et al., A-31009 (July 23, 1968)

Standing to Appeal

A ruling of a land office manager referring motions to dismiss contest complaints to a hearing examiner for consideration is interlocutory in nature and an appeal from such a ruling will be dismissed as premature.

Golden Grigg et al., A-30908 (Apr. 1, 1968)

The death of an offeree prior to the acceptance of an offer terminates the offer, and representatives of the decedent cannot accept the offer on behalf of the deceased offeree's estate; therefore, the heirs of a prospective small tract lease applicant, who died prior to receipt of an offer of a land office to consider a lease application upon his meeting specified conditions, have no right to act upon the offer themselves and, hence, no standing to appeal from the decision of the land office setting forth the terms upon which the issuance of a lease to the decedent would be considered.

Heirs of Christian E. Wicks, A-30895 (Apr. 25, 1968)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons

An appeal to the Director, Bureau of Land Management, is properly dismissed where a statement of reasons was timely filed but in the land office rather than the office of the Director and was apparently never received in the Director's office.

Jack H. Carlisle, A-30919 (Jan. 18, 1968)

A mere statement by an appellant that he believes the decision appealed from was incorrect is insufficient to constitute the statement of reasons required for an appeal.

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file any statement of reasons in support of the appeal.

Norman M. Imbertson, A-30910 (Jan. 19, 1968)

An appeal to the Director, Bureau of Land Management, is properly dismissed when the appellant fails to point out any specific error in the decision appealed from and merely states facts which have no bearing upon the soundness of that decision.

Heirs of Christian E. Wicks, A-30895 (Apr. 25, 1968)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file any statement of reasons in support of the appeal.

Lawrence L. Bunker, A-30979 (June 13, 1968)

Ralph W. Davis & Raymond V. Ault, A-30985 (June 19, 1968)

William Y. Murphey et al., A-31067 (Dec. 23, 1968)

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file any statement of reasons in support of the appeal.

A statement by an appellant that he is appealing a decision because it is adverse to him and he believes it is incorrect is insufficient to constitute a statement of reasons for an appeal.

John S. Wold, A-30988 (June 27, 1968)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing

An appeal to the Secretary of the Interior will be dismissed where the statement of reasons, although received during the 10-day grace period, was not transmitted until after the expiration of the 30-day period in which it was required to be filed.

Stanley F. Thompson, A-30918 (Jan. 26, 1968)

An appeal to the Secretary of the Interior must be dismissed where the notice of appeal, although received during the 10-day grace period, was not transmitted until after the expiration of the 30-day period in which it was required to be filed.

Lino J. Agosti, A-30946 (Feb. 29, 1968)

An appeal to the Director, Bureau of Land Management, is properly dismissed where the appellant did not transmit the statement of reasons in support of the appeal until after expiration of the 30-day period following the filing of the notice of appeal.

United States v. Triangle Mining Company et al., A-30933 (Mar. 19, 1968)

An appeal from the contracting officer's decision must be dismissed for lack of jurisdiction where it was not taken within the 30-day period prescribed by the standard form of Disputes clause.

Appeal of Baldi Construction Engineering, Inc., IBCA-671-9-67 (Apr. 29, 1968)

An appeal to the Director, Bureau of Land Management, from a hearing examiner's decision is properly dismissed where the notice of appeal was addressed to the land office instead of to the hearing examiner's office and, although received in the land office within the 30-day period allowed for filing a notice of appeal, was not forwarded to the examiner's office until after expiration of the 30-day period.

United States v. August Ebbert and Verdabelle Ebbert, A-30984 (June 3, 1968)

A filing fee for an appeal deposited in the after hours mail box at the land office after business hours on the last day for filing an appeal and paying the filing fee will be deemed to have been timely filed.

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

A check timely given in payment of a filing fee for an appeal which is refused payment when first presented to the bank on which it is drawn but which is later paid without having been returned to the land office will be deemed to have been timely filed.

Bernard E. Darling v. Charles Lewellen, A-30885 (June 13, 1968)

An appeal to the Secretary of the Interior should be dismissed by the Director of the Bureau of Land Management when the filing fee for the appeal is paid after expiration of the grace period allowed for payment and will be dismissed by the Secretary when the Director failed to act.

Roger S. Johnson, A-30989 (June 20, 1968)

An appeal to the Secretary must be dismissed where the filing fee for the appeal, although received during the 10-day grace period, was not transmitted until after expiration of the 30-day period in which it was required to be paid.

Roxie I. L. Daniel, A-31000 (June 28, 1968)

An appeal to the Secretary of the Interior must be dismissed where the notice of appeal, although received during the 10-day grace period, was not transmitted until after the expiration of the 30-day period in which it was required to be filed.

C. J. McIntyre, A-31046 (Sept. 24, 1968)

An appeal to the Secretary of the Interior must be dismissed where the notice of appeal, although received during the 10-day grace period, was not transmitted until after the expiration of the 30-day period in which it was required to be filed.

William B. Larkin, Joseph F. Donnelly, A-31047 (Sept. 24, 1968)

RULES OF PRACTICE--Continued

EVIDENCE

The fact that a mining claim is located in a national forest does not qualify the rights of the locator in any way or increase the mineral values required to be shown in a mining contest, but, because the land on which the claim is situated is known to be valuable for purposes other than mining, the Department requires clear and convincing evidence of the values that are claimed in order to establish the validity of the claim.

United States v. Thomas C. Wells, A-30805 (Jan. 8, 1968)

Although exclusionary rules of evidence applicable in court proceedings need not be followed in administrative hearings, a hearing examiner in the interest of fair play and justice may either exclude or, at least, give little weight to a written, uncorroborated statement by a mining claimant who submits the statement in lieu of making an appearance at the hearing.

United States v. Arch Little and Ethelyn Little, A-30842 (Feb. 21, 1968)

A will wherein the testator disinherits his heirs and blood relatives is not unnatural per se. The preference of strangers to the blood by a testator is merely evidence to be considered in the determination of his testamentary capacity, and whether such preference is natural depends on the relationship between the testator and his heirs and devisees.

Evidence of the reason motivating a testator to make a will is material only insofar as it bears upon his testamentary capacity or is indicative of fraud or undue influence having been exercised upon him.

Estate of Edward Leon Petsemoie, IA-T-10 (Apr. 29, 1968)

Where the evidence relating to the marketability of deposits of minerals of widespread occurrence is inconclusive and is lacking in factual data, the case will be remanded for further hearing to develop the facts essential to a meaningful determination.

United States v. Gene DeZan et al., A-30515 (July 1, 1968)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

Adhering to principles enunciated in a prior decision, the Board finds that a memorandum from a Government employee to his superior containing a recommendation as to settlement of a claim constituted a privileged communication to which the appellant was not entitled, insofar as the nonfactual portions of such memorandum are concerned.

Appeal of Power City Construction & Equipment, Inc., IBCA-490-4-65 (July 17, 1968) 75 I. D. 185

Claims of privilege by the Government as to certain documents which an appellant has moved to add to the appeal file, on the ground that they are items of advice and counsel relied on by the contracting officer in making his findings of fact, will be examined on an ad hoc basis; accordingly, where an appellant has so moved in order to determine if the contracting officer acted independently and otherwise in accordance with the duties and obligations imposed upon him, he is entitled to be furnished copies of such documents that are relevant, but since they essentially duplicate existing material in the appeal file, they will not be incorporated therein.

Appeal of Allison & Haney, Inc., IBCA-587-9-66 (Sept. 13, 1968)

When the uncorroborated testimony of an Indian witness not represented by counsel is that she is the daughter of the decedent, and a review of the record discloses that no persuasive evidence was adduced to the contrary, it is the duty of the Hearing Examiner to inquire into the question of paternity with considerable particularity and assist in the discovery of any records or other documentary evidence bearing upon that question.

Estate of Joseph Mjoetah Masquat, IA-T-16 (Nov. 15, 1968)

Noting the general rule that counsel representing litigants should not be called as witnesses in trials involving those litigants if such testimony can be avoided consonant with obtaining justice, the Board finds that the testimony of a Government witness who also participated in presenting the Government's case at the hearing should be treated as oral argument. Preparation by the same counsel of one of the findings of fact was not found to be a violation of the provisions of the Wunderlich Act where there was no showing that the decisions reflected in such findings were other than those of the contracting officer and where the Board noted (i) the absence of a request for a remand to the contracting officer, and (ii) the fact that in the circumstances of the

EVIDENCE--Continued

particular case a remand would apparently serve no useful purpose.

Appeals of American Cement Corporation, IBCA-496-5-65 and IBCA-578-7-66 (Dec. 2, 1968) 75 I. D. 378

The requirement that a base property must have been offered in an application for grazing privileges prior to June 28, 1938, to be qualified as dependent by use is considered satisfied where the Bureau has long recognized an application as establishing such rights and there is evidence tending to show that the application was timely filed; a challenge against the application which attempts to fill gaps in the record facts by applying presumptions of illegality and impropriety will be rejected, as any presumptions to be made in such circumstances should be made in favor of continued recognition and of propriety and legality.

Porter Estate Company, A-30817 (Dec. 2, 1968)

Where the validity of a mining claim as of a date prior to examination of the claim to determine its validity is at issue, the date of the exposure of a mineralized area, not the date of the sampling of the mineralization, is determinative of the admissibility of assay reports and other data as evidence that there was or was not a discovery upon the claim at the critical date; where a witness in a mining contest fails to distinguish between mineralization exposed prior to the crucial date and that exposed thereafter and to explain the significance of each as it relates to the vital issue, his opinion that there is a discovery at the present time is of little or no value in establishing the date of the alleged discovery.

Marvel Mining Company v. Sinclair Oil and Gas Company et al., United States v. Marvel Mining Company, A-30871 (Dec. 30, 1968) 75 I. D. 407

GOVERNMENT CONTESTS

The requirement of the Departmental regulation that service of a contest complaint be made on every contestee is satisfied by service at an address which the mineral locator, whose claim is being contested, has named in his mineral patent application as his post office

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

mailing address for the mineral patent application proceedings.

Upon death of a mineral patent applicant prior to the service upon him of a contest complaint, service must be made upon his heirs or the legal representative of his estate and service at the deceased applicant's address of record is not binding upon his successors.

United States v. Robert N. Johnson et al., A-30828 (Jan. 29, 1968)

Under the Department's rules governing Government contests against mining claims, where an answer to a complaint is filed late the allegations of the complaint will be taken as admitted by the contestee and the case decided without a hearing by the land office, and the rules will not be waived to permit acceptance of an answer which is not filed until after the issuance of a decision holding the contestee in default because he failed to file an answer.

United States v. Harold H. Hunter, A-30872 (Feb. 21, 1968)

Where a hearing examiner orders the taking of a mineral sample jointly by the Government and the mining claimant in a mining contest as a means of reconciling conflicting testimony and instructs the parties to obtain and have submitted to him separate assay reports on the sampling, and where the mining claimant fails to submit any report pursuant to the hearing examiner's instructions, the mining claimant's charge, made after the issuance of the hearing examiner's decision, that the Government's mineral examiner failed to sample properly is untimely and is entitled to no consideration.

United States v. David L. King, A-30867 (Feb. 28, 1968)

Where mining claims have been declared null and void because of the contestee's failure to answer a complaint and the contestee thereafter appeals on the ground that the complaint was framed on the basis of a former rule of discovery which had in fact been changed by an appellate court at the time the contest was initiated but the contestee was not apprised of it, the contestee will not be relieved of its default where subsequent to its appeal the decision of the appellate court is reversed by the Supreme Court and the law of discovery which previously existed is affirmed.

United States v. Southern Nevada Disposal Service, Inc., A-30896 (July 25, 1968)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Where a mining claimant fails to file an answer to a Government contest complaint charging that he has not made a discovery on his claim, the charge will be taken as admitted and the claim declared null and void.

United States v. Sheldon E. Evans, A-30923 (Sept. 30, 1968)

HEARINGS

An objection to the requirement in a notice of hearing that a contestee in a Government contest against his mining claim make a deposit sufficient to defray his share of the reporter's fees must be made to the hearing examiner prior to or at the opening of the hearing and, if made to the land office at the time set for the hearing, is considered waived.

The requirement imposed by a hearing examiner pursuant to regulation that a contestee make a deposit to defray his share of the reporter's fees prior to a hearing on a contest against his mining claim is reasonable and within the Secretary's authority to issue regulations necessary to carry out his duties to administer the public lands and process claims against them.

United States v. Gordon Marshall et al., A-30843 (Jan. 11, 1968)

Where a regulation provides that the rates charged for a right-of-way across Government lands may be revised only after notice and an opportunity for hearing, it is improper to increase the rates without following the prescribed procedure.

Where a regulation provides that rates charged for rights-of-way across Government lands may be revised only after notice and an opportunity for hearing, the hearing ought to be held before the rate is issued, but if the procedure is not followed, a hearing in compliance with the regulation may be held after the first rate determination is set aside.

A requirement that a hearing be held before an action may be taken is satisfied even though an official other than the one who conducts the hearing makes the decision.

RULES OF PRACTICE--Continued

HEARINGS--Continued

The determination of whether to hold a hearing on an issue of fact before a field commissioner abides in the discretion of the Director of the Bureau of Land Management and an appellant from a land office decision fixing or revising a rate charge for a right-of-way over Government lands is not entitled to one as a matter of right, but the Director (or Secretary) may order that one be held if he deems it advisable. Such a hearing will be ordered where it is proposed to change a charge for a revocable right-of-way across wildlife refuge lands from an annual rental to a lump-sum charge and there is sharp controversy as to the basis for determining the lump-sum payment.

Transcontinental Gas Pipe Line Corporation et al., A-30622 (Jan. 29, 1968)

The record made at a hearing in a government contest must be the sole basis for decision under the Department's rules of practice; therefore, assertions submitted on appeal of an evidentiary nature may be considered only to determine if there should be a new hearing.

Although exclusionary rules of evidence applicable in court proceedings need not be followed in administrative hearings, a hearing examiner in the interest of fair play and justice may either exclude or, at least, give little weight to a written, uncorroborated statement by a mining claimant who submits the statement in lieu of making an appearance at the hearing.

The Secretary of Interior may review the entire record in a mining contest case, including statements excluded as evidence by the hearing examiner, to ascertain whether there is any basis for granting a new hearing, and to assure that the examiner's determination that the claim is invalid is fully supported.

United States v. Arch Little and Ethelyn Little, A-30842 (Feb. 21, 1968)

Where a hearing has been held in a mining contest, the record made at the hearing shall be the sole basis for a decision, and evidence submitted at a later date cannot be considered in deciding the case on the merits but can be considered to determine whether or not a further hearing is warranted; where there is no showing that a further hearing would be productive of more conclusive evidence on the question of discovery than has been developed, there is no basis for remanding the case for that purpose.

United States v. David L. King, A-30867 (Feb. 28, 1968)

RULES OF PRACTICE--Continued

HEARINGS--Continued

A stipulation between the Government's attorney and the mining claimant's attorney at a hearing to determine whether a building stone is of a common or uncommon variety under the act of July 23, 1955, that the stone is marketable, does not preclude a further hearing to consider whether the facts relating to the marketability demonstrate that the stone has some property giving it a distinct and special value over other stones used for the same purposes which are also marketable but are considered to be of a common variety.

United States v. U.S. Minerals Development Corporation, A-30407 (Apr. 30, 1968) 75 I. D. 127

Applicants for sodium preference right leases will be afforded an opportunity to present evidence at a hearing in accordance with the provisions of the Administrative Procedure Act where there may be questions of fact as to the extent and nature of the occurrence of the minerals in the deposits and as to the feasibility of the development of the deposits.

Wolf Joint Venture et al., A-30978 (May 2, 1968) 75 I. D. 137

Applicants for sodium preference right leases will be afforded an opportunity to present evidence at a hearing in accordance with the provisions of the Administrative Procedure Act where there may be questions of fact as to the extent and nature of the occurrence of the minerals in the deposits and as to the feasibility of the development of the deposits.

Kaiser Aluminum and Chemical Corporation et al., A-30982 (May 3, 1968)

An applicant for the conveyance of land under the Mining Claims Occupancy Act is not entitled as a matter of right to a hearing on the question of the facts relating to his qualifications as an applicant, and a hearing is properly denied where the applicant fails to allege the existence of facts which, if proved, would entitle him to the relief sought.

Eveline and John Anthony Schaefer, A-30901 (May 21, 1968)

Where the evidence relating to the marketability of deposits of minerals of widespread occurrence is inconclusive and is lacking in factual data, the case will be remanded for further hearing to develop the facts essential to a meaningful determination.

United States v. Gene DeZan et al., A-30515 (July 1, 1968)

RULES OF PRACTICE--Continued

HEARINGS--Continued

A request for rehearing, filed more than 60 days after the date of an order of a Hearing Examiner determining heirs or approving the last will of an Indian, may properly be denied as untimely.

Where a parent survived a deceased Indian and would, under the applicable statutes of descent and distribution, be the sole heir at law if the decedent had died intestate without issue, brothers and sisters of the decedent have no standing to petition in their own behalf for a rehearing of an order determining heirship or approving the last will of the decedent.

Estate of William Bearshead, IA-T-6 (Sept. 30, 1968)

A hearing will not be granted in connection with a trade and manufacturing site application where the applicant fails to allege facts which, if proved, would entitle him to favorable consideration of his application.

Hershel E. Crutchfield, A-30876 (Sept. 30, 1968)

Where a review of the evidence adduced at a hearing raises grave doubts as to whether the hearing was fully utilized to bring forth all of the facts necessary to the determination of the decedent's heirs, the case will be remanded for further hearing.

Estate of Joseph Mjoetah Masquat, IA-T-16 (Nov. 15, 1968)

PRIVATE CONTESTS

A charge alleging that an entry was made by the entryman for purposes of speculation and in collusion with others for the benefit of others and that the entryman had entered into an agreement to convey all or a portion of the land contained in the entry states adequate grounds to support a contest and is not a mere statement of a conclusion of law.

A charge in a contest complaint which alleges that the land in the entry was alienated "for purposes not authorized as public purposes" states a conclusion of law and is not a sufficient charge under departmental regulations governing private contests.

A charge that an entryman has not cultivated 1/16 of the land in his entry made while 8 months of the second entry year remain is premature and will not sustain a contest.

RULES OF PRACTICE--Continued

PRIVATE CONTESTS--Continued

Reference in a note in the case file to conversations between an entryman and a land office employee concerning the possibility that an entryman has conveyed all or part of his entry and to letters of the contestant or others referring to the contestant that an entry was made through fraud and collusion are not reasons shown by the records of the Bureau of Land Management sufficient to bar a contest charge that the entryman has agreed to convey all or part of the land in his entry.

Allegations made by a contestant in an appeal arising after the filing of his complaint which purport to give reasons for canceling an entry may not be considered as part of the contest complaint.

An answer to a contest mailed on the last day for filing and received on the day after the expiration of the filing period is timely filed.

Bernard E. Darling v. Charles Lewellen, A-30885 (June 13, 1968)

A private contest against a "homestead" for which the application to enter and notice of settlement have been rejected because the lands described were covered by a prior State selection when the application for homestead entry was filed and settlement made is properly dismissed on the grounds that the entryman had no claim or interest subject to attack by contest and that a contest does not lie for matters shown by the records of the Bureau of Land Management.

Dale Johnson, A-30806 (Sept. 17, 1968)

In a private contest initiated by a mining claimant to determine, as between himself and an oil and gas lessee, the right to leasable minerals within the limits of a mining claim, it is incumbent upon the mining claimant to show that a discovery was made upon the claim at a time when such discovery would vest in him a right to the leasable minerals, and if he is unable to sustain this burden, the contest is properly dismissed notwithstanding any acknowledgment on the part of the United States of a present discovery on the claim.

Marvel Mining Company v. Sinclair Oil and Gas Company et al., United States v. Marvel Mining Company, A-30871 (Dec. 30, 1968) 75 I. D. 407

RULES OF PRACTICE--Continued

SUPERVISORY AUTHORITY OF SECRETARY

The Secretary of Interior may review the entire record in a mining contest case, including statements excluded as evidence by the hearing examiner, to ascertain whether there is any basis for granting a new hearing, and to assure that the examiner's determination that the claim is invalid is fully supported.

United States v. Arch Little and Ethelyn Little, A-30842 (Feb. 21, 1968)

The Secretary has the inherent power, notwithstanding the absence of specific regulations, to reopen and review administrative determinations purporting to be final when some new factor such as fraud or newly discovered evidence is brought to his attention.

Authority of the Secretary of the Interior to make final administrative disposition of appeals involving the approval or disapproval of wills of deceased Indians has been delegated to Regional Solicitors by 210 DM 2.2A(3), 24 F. R. 1348, and Solicitor's Regulation 23, 31 F. R. 4631.

Estate of Edward Leon Petsemoie, IA-T-10 (Supp.) (May 29, 1968)

The Secretary of the Interior has by express terms reserved to himself the power to waive and make exceptions to his regulations affecting Indian matters and, further, has the inherent power, notwithstanding the absence of specific regulations so providing, to reopen and review administrative determinations purporting to be final.

Estate of Ellen Fitzpatrick, IA-T-5 (Supp.) (Nov. 5, 1968)

WITNESSES

Noting the general rule that counsel representing litigants should not be called as witnesses in trials involving those litigants if such testimony can be avoided consonant with obtaining justice, the Board finds that the testimony of a Government witness who also participated in presenting the Government's case at the hearing should be treated as oral argument. Preparation by the same counsel of one of the findings of fact was not fould to be a violation of the provisions of the Wunderlich Act where there was no showing that the decisions reflected in such findings were other than those of the contracting officer and where the Board noted (i) the absence of a

RULES OF PRACTICE--Continued

WITNESSES--Continued

request for a remand to the contracting officer, and (ii) the fact that in the circumstances of the particular case a remand would apparently serve no useful purpose.

Appeals of American Cement Corporation, IBCA-496-5-65 and IBCA-578-7-66 (Dec. 2, 1968) 75 I. D. 378

SCHOOL LANDS

MINERAL LANDS

To establish the mineral character of lands sought by a State, either in exchange for other lands or as indemnity for lost school lands, it must be shown that known conditions are such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

The mineral character of land may be established by inference without actual exposure of the mineral deposit for which the land is supposed to be valuable, but the inferred existence of a deposit of high-quality limestone at unkown depth does not establish the mineral character of land in the absence of evidence that extraction of the limestone is economically feasible, thereby giving the land a practical value for mining purposes.

State of California v. E. O. Rodeffer, A-30611 (June 28, 1968) 75 I. D. 176

SECRETARY OF THE INTERIOR

Where an option agreement for the purchase of an Indian allotment provides for payment of the full purchase price upon consummation of the sale, the approval of the agreement is within the discretion of the Secretary of the Interior.

Proposed Sale of Mission Creek Allotted and Tribal Trust Lands, M-36742 (Jan. 19, 1968)

SECRETARY OF THE INTERIOR--Continued

The Secretary of the Interior and his subordinates have no leasing authority over Government land unless such authority is conferred by Congress.

The Secretary of the Interior may grant revocable permits for the use of Government land.

Status of Use Permit--Bureau of Indian Affairs to Paul D. Merrill, Ft. Wingate Trading Post, New Mexico, M-36743 (Mar. 19, 1968)

Funds held in the United States Treasury in trust for an Indian tribe or individual may be invested by the Secretary or his delegate in public debt obligations of the United States and in bonds, notes, or other obligations unconditionally guaranteed as to both principal and interest by the United States, 25 U.S.C. sec. 162a (1964).

"Public debt obligations" includes only bonds issued by the United States Treasury; "bonds, notes, or other obligations which are unconditionally guaranteed as to both principal and interest by the United States" includes obligations fully or unconditionally guaranteed or insured by a Government agency pursuant to a congressional grant of authority for a constitutional purpose.

The Secretary or his delegate may invest Indian trust funds in any obligations not unconditionally guaranteed by the United States if, by statute, such an obligation is made the lawful subject of investment for all trust funds under the authority or control of the United States.

Investment of Indian Tribal Trust Funds, M-36732 (May 3, 1968)

The equitable principle that approval of a deed of Indian land relates back to make the conveyance effective as of the date of execution, does not prevent the Secretary or his delegate from considering circumstances which occurred subsequent to execution in determining whether the deed should be approved.

Appeal of Tena Bearskin First Sound, IA-1668 (June 11, 1968)

SMALL TRACT ACT

GENERALLY

The death of an offeree prior to the acceptance of an offer terminates the offer, and representatives of the decedent cannot accept the offer

SMALL TRACT ACT--Continued

GENERALLY--Continued

on behalf of the deceased offeree's estate; therefore, the heirs of a prospective small tract lease applicant, who died prior to receipt of an offer of a land office to consider a lease application upon his meeting specified conditions, have no right to act upon the offer themselves and, hence, no standing to appeal from the decision of the land office setting forth the terms upon which the issuance of a lease to the decedent would be considered.

Heirs of Christian E. Wicks, A-30895 (Apr. 25, 1968)

Where, under the proposed terms of a small tract lease, the lessee would be prohibited from constructing any improvements on the leased land in addition to those already existing, the lessee may be allowed to build a carport as an appurtenance to an existing house where such construction would not adversely affect the interests of or impose an obligation upon the United States and where the only objection to the construction raised is that it would create an additional burden for the lessee in the event that he is required to remove his improvements at the end of the lease term.

Virgil C. and Lucy M. Boudreau, A-30961 (Nov. 13, 1968)

An offer of a 5-year small tract lease renewable at the option of the Bureau of Land Management will not be disturbed where the offeree indicates that he will be satisfied with it although he would like an added option to buy or a longer term.

Roscoe C. Zink, A-31076 (Dec. 30, 1968)

SODIUM LEASES AND PERMITS

GENERALLY

Applications for sodium prospecting permits covering lands included in the proposed Five Point Oil Shale Program announced by the Secretary of the Interior on January 27, 1967, to promote economic recovery of all constituent minerals of oil shale, will be rejected under the discretionary authority of the Secretary of the Interior as the public interest will not be served by issuance of prospecting permits for

SODIUM LEASES AND PERMITS--Continued

GENERALLY--Continued

sodium minerals contained in the oil shale lands in the Piceance Creek Basin.

Cameron and Jones, Inc. et al., Colorado 0118325, etc. (Apr. 4, 1968)

Richard H. DeVoto et al., C 3160, etc. (Apr. 4, 1968)

Substances of sodium enumerated in section 23 of the Mineral Leasing Act, whether simple, double or complex compounds of sodium, are subject to disposition only under the provisions of the Mineral Leasing Act.

Applicants for sodium preference-right leases will be afforded an opportunity to present evidence at a hearing in accordance with the provisions of the Administrative Procedure Act where there may be questions of fact as to the extent and nature of the occurrence of the minerals in the deposits and as to the feasibility of the development of the deposits.

Wolf Joint Venture et al., A-30978 (May 2, 1968) 75 I. D. 137

Applicants for sodium preference right leases will be afforded an opportunity to present evidence at a hearing in accordance with the provisions of the Administrative Procedure Act where there may be questions of fact as to the extent and nature of the occurrence of the minerals in the deposits and as to the feasibility of the development of the deposits.

Kaiser Aluminum and Chemical Corporation et al., A-30982 (May 3, 1968)

While lands in national forests are subject to the provisions of the Mineral Leasing Act, the issuance of leases and permits for sodium is discretionary with the Secretary of the Interior, and a sodium prospecting permit application for lands under the administrative jurisdiction of the Forest Service is properly rejected where that agency objects to the issuance of a permit and it appears that issuance of the permit would interfere with surface uses to which the land has been dedicated.

Gene R. Blaney, A-30894 (June 11, 1968)

SOLDIERS' ADDITIONAL HOMESTEADS

GENERALLY

An application for cash payment under a soldiers' additional homestead claim will not be rejected for failure to show that the soldier and the homestead entryman upon whose military service and entry the claim is based were the same person where there is substantial, although not necessarily conclusive, evidence that they were the same and the record reveals no substantial reason for believing that they were different persons.

George A. Evans, A-30987 (Oct. 16, 1968)

SOLICITOR, DEPARTMENT OF THE INTERIOR

Where a State applies for land under the provisions of the Swamp Land Act, and after hearing the examiner holds that certain lands are subject to grant under the act, and where, after the decision of the hearing examiner is appealed by the Regional Solicitor on behalf of the State Director, Bureau of Land Management, the Bureau of Indian Affairs files a petiton to intervene for itself and on behalf of an Indian Tribe, the petition will be denied, since all bureaus and agencies of the Department are represented in adjudicative proceeding within the Department by the Office of the Solicitor and are not permitted to independently participate.

In the Matter of Land Classification State of California, Applicant, A-31022 (Aug. 14, 1968)

STATE EXCHANGES

GENERALLY

To establish the mineral character of lands sought by a State, either in exchange for other lands or as indemnity for lost school lands, it must be shown that known conditions are

STATE EXCHANGES--Continued

GENERALLY--Continued

such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

State of California v. E. O. Rodeffer, A-30611 (June 28, 1968) 75 I. D. 176

STATE SELECTIONS

(See also School Lands, and Swamplands)

To establish the mineral character of lands sought by a State, either in exchange for other lands or as indemnity for lost school lands, it must be shown that known conditions are such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

State of California v. E. O. Rodeffer, A-30611 (June 28, 1968) 75 I. D. 176

Where land covered by a prematurely filed State selection is described in notices of publication published after the land has become available for selection, the notices will be considered as reassertions of the State's selection and will segregate the land they describe from all appropriation by application or settlement so that an application for homestead entry filed thereafter is properly rejected.

John Gonzales, A-30604 (Sept. 26, 1968)

Where a prematurely filed State selection is amended after the land has become available for selection and during a preference period granted the State, the amendment will be considered a reassertion of interest in the lands originally applied for and will be considered as a refiling of the original application and will segregate the land it describes from all appropriation by application or settlement; thus an application for homestead entry filed thereafter is properly rejected.

Dell M. Husted, A-30932 (Dec. 5, 1968)

STATUTORY CONSTRUCTION

GENERALLY

Lands within the Flathead Indian Reservation reserved in 1909 under a provision authorizing the Secretary to reserve from all appropriations lands chiefly valuable for power or reservoir sites, which lands have since been used for the Flathead Indian Irrigation and Power Project, are reserved for the physical works and facilities of the irrigation and power systems of the Flathead project within the meaning of section 5(b) of the act of May 25, 1948 (62 Stat. 269), it being immaterial that the 1909 reservation withdrew lands valuable for a power or reservoir site without expressly using the term "project."

Enlargement of Kerr Substation, Flathead Irrigation Project, Montana, M-36735 (Jan. 31, 1968)

As the Klamath Termination Act sets no time limitation on the provision authorizing the Secretary to adjust, eliminate, or cancel irrigation costs in specified circumstances, the authority continues as long as the purpose of the statute requires; and the publication of the proclamation declaring the termination of the Federal trust relationship pursuant to section 18 of the Termination Act is not a bar to canceling irrigation charges under section 13(d) of the act where both the express language and the sense of the provisions involved support the conclusion that the jurisdiction of the Federal Government continues after the termination proclamation for this purpose, among others.

Transfer of Modoc Point Unit, Klamath Indian Irrigation Project, Oregon, M-36737 (Apr. 26, 1968)

LEGISLATIVE HISTORY

The Act of August 19, 1958, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390, requires the preparation of a plan for distributing the assets of California rancherias or for selling such assets and distributing the proceeds, but neither the amended act nor its legislative history specify or restrict the manner of sale.

Proposed Sale of Mission Creek Allotted and Tribal Trust Lands, M-36742 (Jan. 19, 1968)

STOCK-RAISING HOMESTEADS

Where a mineral locator seeks to carry on mining operations on a claim located within a patented stock-raising homestead entry, he need post a bond sufficient to cover only damage to crops, to improvements, and to the value of the land for grazing purposes within the limits of the mining claim and not one sufficient to cover damages caused by a disruption of the surface owners' entire grazing operation.

L. W. Hansen, Anthony & Betty Bubany, A-31029 (Dec. 30, 1968)

SURFACE RESOURCES ACT

GENERALLY

In a proceeding under section 5 of the act of July 23, 1955, to determine the rights of a mining claimant to the surface resources of his mining claim, the claim is properly subject to the limitations and restrictions of section 4 of that act unless it is shown that there was a valid discovery of a valuable mineral deposit within the meaning of the mining laws within the limits of the claim prior to the date of the act.

United States v. C. T. Fredrickson, A-30848 (Jan. 29, 1968)

A mining claim is properly declared subject to the act of July 23, 1955, if the claimant fails to show the discovery of a valuable mineral deposit within the limits of the claim.

United States v. David L. King, A-30867 (Feb. 28, 1968)

In a proceeding under section 5 of the act of July 23, 1955, to determine the rights of a mineral claimant to the surface resources of his mining claims, the claims are properly subjected to the limitations and restrictions of section 4 of that act unless it is shown that a valid discovery within the meaning of the mining laws was made within the limits of each claim prior to the date of the act.

United States v. Adam J. Flurry, A-30887 (Mar. 5, 1968)

SURFACE RESOURCES ACT--Continued

GENERALLY--Continued

A mining claim is properly declared subject to the act of July 23, 1955, if the mining claimant fails to show the existence, within the limits of the claim, of a valuable mineral deposit which was discovered prior to the date of the act.

United States v. Esther R. Smith, A-30888 (Mar. 29, 1968)

Since Congress limited the effect of a proceeding under section 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the surface resources of a mining claim, a claim is not declared null and void as a result of such a proceeding decided in favor of the Government, and the claimant may continue to engage in mining activities although he is not entitled to the use and management of the surface resources for other than mining purposes prior to issuance of patent for the claim.

In a proceeding under section 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the surface resources of a mining claim prior to patent, the Government will prevail if it is shown that there was not a discovery of a valuable mineral deposit as of the date of the act even if such a discovery is subsequently made, and it will also prevail if a discovery existed as of the date of the act but it is determined that thereafter a valuable mineral deposit does not exist within the claims because of a change in conditions.

A mining claimant is not prejudiced if in a proceeding under section 5 of the Surface Resources Act the only issue stated at the hearing is whether at the time of the hearing, rather than on July 23, 1955, a discovery has been made on his claim and he submits evidence on that issue.

Mining claims containing an unknown quantity of low-grade manganese ore are properly declared subject to the limitations under section 4 of the Surface Resources Act of July 23, 1955, where the evidence shows that a prudent man could not now expect to develop a valuable mine because there is no market for the ore, regardless of whether under more favorable market conditions created primarily by a Government stockpiling program paying incentive prices prior to the date of that act the prudent man would have had more basis for anticipating that such ore could be mined and sold.

United States v. A. Speckert, A-30917 (Nov. 29, 1968) 75 I. D. 367

SURPLUS PROPERTY

(See also Federal Property and Administrative Services Act)

Withdrawn public domain lands do not become "surplus" within the meaning of the Federal Property and Administrative Services Act, 40 U. S. C. sec. 471 et seq., until after a determination by the Secretary of the Interior and concurred in by the Administrator of General Services, that the lands are not suitable for return to the public domain.

Proposed Sale of Withdrawn Land by the Corps of Engineers, M-36749 (Aug. 21, 1968) 75 I. D. 245

SURVEYS OF PUBLIC LANDS

GENERALLY

Where, subsequent to the issuance of patent to sec. 33, T. 28 S., R. 34 E., a resurvey was made which resulted in a determination that the area so patented lay within the limits of a different township and in the designation of a different area as sec. 33, T. 28 S., R. 34 E., and where the jurisdiction of the United States over a part of the land now designated as section 33 is challenged on the premise that title to the area in question passed from the United States by virtue of the patent, the lack of jurisdiction over the land can be demonstrated only by showing that the disputed area is within the limits of the original section 33 as it was surveyed on the ground, and any showing of error in either the original plat of survey or the plat of resurvey is immaterial if it fails to establish that fact.

A survey of public lands creates, and does not merely identify, the boundaries of sections of land, and public land cannot be described or conveyed as sections or subdivisions of sections unless the land has been officially surveyed.

When the locations of corners established by an official Government survey are identified, they are conclusive, and the corner of a Government subdivision is where the United States surveyors in fact established it, whether such location is right or wrong.

A patentee of public land takes according to the actual survey on the ground, even though the official survey plat may not show the tract as it is located on the ground, and the Federal

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Government is without power to affect, by means of any subsequent survey, the property rights acquired under an official survey.

United States v. Sidney M. and Esther M. Heyser, A-30810 (Jan. 24, 1968) 75 I. D. 14

Locations of corners established by an official Government survey are conclusive, and the corner of a Government subdivision is where the United States surveyors in fact established it, whether such location is right or wrong.

A resurvey of public land by the United States cannot alter or change property rights of private persons which have become vested and fixed by virtue of patents issued by the United States.

In making a retracement or dependent resurvey of public lands, the corners established by the original survey should be located if possible by considering all relevant evidence and not simply one or two factors.

In determining whether original survey corners were properly identified by an official dependent resurvey of public lands, the fact that the measured distance between two identified original corners as determined by the resurvey differs somewhat from the measurement given in the original survey is not sufficient alone to disprove the identification of the corners as discrepancies between measurements in old and more recent surveys are not uncommon.

A protest by private parties against the acceptance of a plat of a dependent resurvey of an area of public land is properly dismissed where the evidence supports a determination that an original quarter section corner in dispute was actually found by Government surveyors rather than by a private surveyor, contrary to the protestants' contentions.

Rubicon Properties, Inc. et al., A-30748 (May 6, 1968)

Where the Bureau of Land Management has found that an applicant to purchase a trade and manufacturing site is entitled to only a portion of the surveyed lot applied for by reason of his occupancy and improvement of the land, the applicant may properly be required to furnish a deposit to cover the estimated costs of a supplemental survey and plat to segregate the allowable portion of the lot.

George Mor, A-30914 (May 27, 1968)

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Where in the course of a dependent resurvey a mound of stone is found in a position consistent with that of the original corner which is reasonably well correlated with other original corners found in the township, it will be accepted as the original corner in preference to a more remote corner despite the fact that the latter appears to have been used as a corner in the positioning of fences built many years ago and accepted as the boundary by some landowners in the area.

Gilbert and Logie Nolan, A-30905 (Aug. 8, 1968)

DEPENDENT RESURVEYS

Where a resurvey of land as public land is protested on the ground that the land does not belong to the United States, the facts and law must be considered to determine whether they support a claim by the United States of title to the land so that there is authority for extending or correcting the original survey.

William R. Mills et al., A-30710 (Feb. 28, 1968)

In making a retracement or dependent resurvey of public lands, the corners established by the original survey should be located if possible by considering all relevant evidence and not simply one or two factors.

In determining whether original survey corners were properly identified by an official dependent resurvey of public lands, the fact that the measured distance between two identified original corners as determined by the resurvey differs somewhat from the measurement given in the original survey is not sufficient alone to disprove the identification of the corners as discrepancies between measurements in old and more recent surveys are not uncommon.

A protest by private parties against the acceptance of a plat of a dependent resurvey of an area of public land is properly dismissed where the evidence supports a determination that an original quarter section corner in dispute was actually found by Government surveyors rather than by a private surveyor, contrary to the protestants' contentions.

Rubicon Properties, Inc. et al., A-30748 (May 6, 1968)

SURVEYS OF PUBLIC LANDS--Continued

DEPENDENT RESURVEYS--Continued

Where in the course of a dependent resurvey a mound of stone is found in a position consistent with that of the original corner which is reasonably well correlated with other original corners found in the township, it will be accepted as the original corner in preference to a more remote corner despite the fact the the latter appears to have been used as a corner in the positioning of fences built many years ago and accepted as the boundary by some landowners in the area.

Gilbert and Logie Nolan, A-30905 (Aug. 8, 1968)

SWAMPLANDS

Where a State applies for land under the provisions of the Swamp Land Act, and after hearing the examiner holds that certain lands are subject to grant under the act, and where, after the decision of the hearing examiner is appealed by the Regional Solicitor on behalf of the State Director, Bureau of Land Mangement, the Bureau of Indian Affairs files a petition to intervene for itself and on behalf of an Indian Tribe, the petition will be denied, since all bureaus and agencies of the Department are represented in adjudicative proceeding within the Department by the Office of the Solicitor and are not permitted to independently participate.

In the Matter of Land Classification State of California, Applicant, A-31022 (Aug. 14, 1968)

TIMBER SALES AND DISPOSALS

When under a timber sales contract the purchaser is liable for the full purchase price, he must pay that amount even though he does not remove all the timber or the amount of the timber available to him under the contract does not come up the estimated volume; he is, however, to be given credit for the amount he has paid and the value of the timber remaining uncut

TIMBER SALES AND DISPOSALS--Continued

less the costs of conducting a resale. He is also liable for the fixed amount he agreed to pay the United States for rehabilitation work in lieu of doing such work himself.

Leslie G. Caughman, A-30890 (Feb. 21, 1968)

Where under a Bureau of Land Management timber sales contract and the regulations an extension of the contract time to remove the timber from the contract area may be made with payment of the price of the remaining timber reappraised according to the Bureau's prescribed appraisal procedures for determining the stumpage value, an appraisal so made will be accepted where the purchaser fails to demonstrate error either in the stumpage value or volume of remaining timber fixed by the appraisal.

William Hoornbeek, A-30900 (Apr. 29, 1968)

Where an amendment to a Departmental regulation would authorize relief to a purchaser under a timber sales contract from a rigid requirement imposed by the terms of the contract and the regulations in effect at the date of execution of the contract that payment in full of the contract purchase price be made prior to the expiration date of the contract as a condition to the granting of an extension of time for the cutting and removal of timber, the benefit of the amended regulation may be extended to the purchaser if it does not adversely affect the rights of others and is not detrimental to the interests of the United States.

Forrest Industries, Inc., A-31001 (July 30, 1968)

WILDLIFE REFUGES AND PROJECTS

The determination of whether to hold a hearing on an issue of fact before a field commissioner abides in the discretion of the Director of the Bureau of Land Management and an appellant from a land office decision fixing or revising a rate charge for a right-of-way over Government lands is not entitled to one as a matter of right, but the Director (or Secretary) may order that one be held if he deems it advisable.

WILDLIFE REFUGES AND PROJECTS--Continued

Such a hearing will be ordered where it is proposed to change a charge for a revocable right-of-way across wildlife refuge lands from an annual rental to a lump-sum charge and there is sharp controversy as to the basis for determining the lump-sum payment.

Transcontinental Gas Pipe Line Corporation et. al., A-30622 (Jan. 29, 1968)

WITHDRAWALS AND RESERVATIONS

GENERALLY

A withdrawal of all lands within one half mile of a river is not so vague and indefinite as to preclude its being effective against mining claims thereafter located within the withdrawn area.

Armin Speckert, A-30854 (Jan. 10, 1968)

Lands within the Flathead Indian Reservation reserved in 1909 under a provision authorizing the Secretary to reserve from all appropriations lands chiefly valuable for power or reservoir sites, which lands have since been used for the Flathead Indian Irrigation and Power Project, are reserved for the physical works and facilities of the irrigation and power systems of the Flathead project within the meaning of section 5(b) of the act of May 25, 1948 (62 Stat. 269), it being immaterial that the 1909 reservation withdrew lands valuable for a power or reservoir site without expressly using the term "project."

Enlargement of Kerr Substation, Flathead Irrigation Project, Montana, M-36735 (Jan. 31, 1968)

As land reserved for the use of the Pala, Pauma, and Warner's Ranch Indians is under the administrative control of the Bureau of Indian Affairs, rights-of-way over such land are governed by regulations of the Bureau of Indian Affairs, not those of the Bureau of Land Management, and income from land so reserved is not subject to disposition as if the land were public land.

Jurisdiction of Lands Withdrawn for the Benefit of Certain Groups of Mission Indians, California--Patent of Land Under the Act of March 1, 1907, M-36756 (Oct. 8, 1968)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Mining claims are properly declared to be null and void ab initio where the land in the claims had at the time of location been included in an application for withdrawal which was noted on the records of the land office.

Albert Gardini, John Baldrica, A-30958 (Oct. 16, 1968)

EFFECT OF

Lands temporarily reserved for the use of the Pala, Pauma, and Warner's Rance Mission Indians of California remain reserved until the withdrawal order is revoked.

Jurisdiction of Lands Withdrawn for the Benefit of Certain Groups of Mission Indians, California--Patent of Land Under the Act of March 1, 1907, M-36756 (Oct. 8, 1968)

POWER SITES

A mining claim located before August 11, 1955, on land within an existing powersite classification is null and void because the land was then unavailable for mining location.

Armin Speckert, A-30854 (Jan. 10, 1968)

Lands which were reserved from mining location by reason of inclusion in an application for a power project filed prior to August 11, 1955, and which were opened to location by section 2 of the act of August 11, 1955, become closed to location thereafter if they come under examination and survey by a prospective licensee holding an uncanceled preliminary permit issued by the Federal Power Commission after August 11, 1955, and mining claims on such lands located thereafter are void ab initio.

A. L. Snyder et al., A-30880 (Feb. 14, 1968)
75 I. D. 33

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION

Land in a stock-driveway withdrawal is not subject to petition-application under the enlarged homestead law; a petition-application for such land is properly rejected and will gain the applicant no rights or preference even if the withdrawal is later revoked.

Reed F. Adams, A-30950 (Oct. 16, 1968)

STOCK-DRIVEWAY WITHDRAWALS

Land in a stock-driveway withdrawal is not subject to petition-application under the enlarged homestead law; a petition-application for such land is properly rejected and will gain the applicant no rights or preference even if the withdrawal is later revoked.

Reed F. Adams, A-30950 (Oct. 16, 1968)

WORDS AND PHRASES

"Dependent Indian Communities." The phrase "dependent Indian communities" 18 U.S.C. sec. 1151 (1964 ed.), as it applies to Alaska includes but is not limited to those native communities which are organized under the Indian Reorganization Act of June 18, 1934 (25 U.S.C. secs. 476, 479 (1964 ed.)).

The Arctic Slope Native Association cannot be considered a "community."

Liquor Control, Indian Communities, Alaska M-36712 (Supp.) (Jan. 15, 1968)

WORDS AND PHRASES--Continued

"Indian Country." The Act of August 8, 1958, 72 Stat. 545, 18 U.S.C. sec. 1162, 28 U.S.C. sec. 1360 (1964 ed.), recognizes the existence of "Indian country" in Alaska.

The term "Indian country," as defined in 18 U.S.C. sec. 1151 (1964 ed.), applies to the Congressional, Secretarial and Executive Order native reservations in Alaska and to dependent native communities.

Liquor Control, Indian Communities, Alaska, M-36712 (Supp.) (Jan. 15, 1968)

"Lands." The term "lands" can be construed as covering mineral interests constructively severed from the surface interest.

Jurisdiction of Coal Reserved for Benefit of Indians Belonging to and Having Tribal Rights on the Fort Berthold Indian Reservation, M-36745 (Apr. 19, 1968)

"Mine." The term "Mine" as used in Federal Metal and Nonmetallic Mine Safety Act includes mills, but does not include smelters and refineries.

Applicability of Federal Metal and Nonmetallic Mine Safety Act (Act of September 16, 1966; 80 Stat. 772; 30 U.S.C. 721-740, Supp. III (1968)), M-36750 (Aug. 30, 1968)

"Public debt obligations." The phrase "Public debt obligations" includes only bonds issued by the United States Treasury; "bonds, notes, or other obligations which are unconditionally guaranteed as to both principal and interest by the United States" includes obligations fully or unconditionally guaranteed or insured by a Government agency pursuant to a congressional grant of authority for a constitutional purpose.

Investment of Indian Tribal Trust Funds, M-36732 (May 3, 1968)

"Royalty." The term "royalty" as used in 25 CFR 172.16 and standard oil and gas leases of Indian lands encompasses so-called compensatory royalties, that is, payments made to compensate the lessor for loss of royalty resulting from drainage of the leasehold by wells on adjoining land, as well as production.

Pan American Petroleum Corp., IA-1578 (Feb. 29, 1968)

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